THE PROTECTEUR DU CITOYEN

ANNUAL REPORT 2004

2005

This could happen to YOU

LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

www.protecteurducitoyen.qc.ca

THE PROTECTEUR DU CITOYEN

ANNUAL REPORT 2004

2005

This could happen to YOU

LE PROTECTEUR DU CITOYEN
Assemblée nationale
Québec

This publication has been printed on paper made of recycled fibres.

The term « Protecteur du citoyen » refers to the activities of the institutions as a whole, while « Protector » refers to a personal intervention of the incumbent.

The masculine form is used in this text to designate both men and women.

Également disponible en version française.

Legal Deposit – Bibliothèque nationale du Québec, 2005

ISBN : 2-550-44224-5

ISSN : 1189-9522

105-05245/

LE PROTECTEUR DU CITOYEN
Assemblée nationale
Québec

Quebec, June 15, 2005

Mr. Michel Bissonnet
President
National Assembly
Hotel du Parlement
Quebec, Quebec G1A 1A4

Mr. Speaker,

In accordance with Article 28 of the Public Protector Act, I am honoured to present the Protecteur du citoyen's 35th Annual Report for the period of April 1, 2004, to March 31, 2005, entitled "This could happen to YOU".

Yours sincerely,

The Protector,

Pauline Champoux-Lesage

Pauline Champoux-Lesage

TABLE OF CONTENTS

1. THE PROTECTEUR DU CITOYEN'S MISSION 9

2. THOUGHTS AND COMMENTS OF THE PROTECTOR 11

3. SOME OF THE PROTECTEUR DU CITOYEN'S INTERVENTIONS IN 2004-2005 17
   - 3.1 MINISTRIES 17
     - 3.1.1 The ministère de l'Éducation 17
     - 3.1.2 The ministère de l'Emploi, de la Solidarité sociale et de la Famille 23
     - 3.1.3 The ministère de la Justice 28
     - 3.1.4 The ministère des Relations avec les citoyens et de l'Immigration 30
     - 3.1.5 The ministère des Ressources naturelles, de la Faune et des Parcs 34
     - 3.1.6 Revenu Québec 35
       - Fiscal policy 35
       - Support payments collection 38
     - 3.1.7 The ministère de la Sécurité publique 42
   - 3.2 GOVERNMENT AGENCIES 46
     - 3.2.1 The Commission de la santé et de la sécurité du travail 46
       - Workers' compensation 46
       - Crime Victims Compensation 48
     - 3.2.2 The Curateur public 50
     - 3.2.3 The Régie de l'assurance maladie du Québec 53
     - 3.2.4 The Régie des rentes du Québec 56
     - 3.2.5 The Société de l'assurance automobile du Québec 58
       - Compensation for traffic accident victims 58
       - Highway Safety Code 62
   - 3.3 SCRUTINY OF LEGISLATION: ANALYSIS OF PARLIAMENTARY BILLS AND DRAFT REGULATIONS 66

4. PUBLIC AND MEDIA RELATIONS 75

5. THE PROTECTEUR DU CITOYEN'S NATIONAL AND INTERNATIONAL ACTIVITIES 79
   - 5.1 VIII[e] CONFERENCE OF THE INTERNATIONAL OMBUDSMAN INSTITUTE 79
   - 5.2 VISITS BY FOREIGN DELEGATIONS 80
   - 5.3 EXTERNAL MEETINGS 80

6. MANAGEMENT REPORT 81
   - 6.1 ORGANIZATION CHART 81
   - 6.2 RESOURCES MANAGEMENT 82
     - 6.2.1 Human resources 82
     - 6.2.2 Financial resources 83
     - 6.2.3 Computer resources 84
   - 6.3 STRATEGIC PLANNING 85
   - 6.4 SERVICE STATEMENT TO CITIZENS 90
   - 6.5 THE SERVICE QUALITY COMMISSIONER'S REPORT 92
   - 6.6 ACCESS TO INFORMATION AND THE PROTECTION OF PERSONAL INFORMATION 93
   - 6.7 STAFF MEMBERS 95
   - 6.8 STATISTICS 96

THE PROTECTEUR DU CITOYEN'S MISSION

The Protecteur du citoyen has been entrusted by Law the function of "watchdog" of Quebec's administrative authorities. It will intervene whenever has reason to believe that a person or a group of people has or could be adversely affected. It is responsible for receiving complaints concerning administrative authorities. If necessary, it intervenes with government departments and agencies to rectify a prejudicial situation and ensure that the situation will not reoccur. With the goal of preventing injury, the Protecteur du citoyen issues recommendations aimed at eliminating sources of potential problems and consequently ensures the protection of the rights of citizenry and corrects dysfunctions in the public administration, thereby contributing to strengthening democracy and the constitutional state.

An impartial and human approach: It is possible

In the last four years, I have tried to draw attention through my annual reports to the unique issues raised by the complaints processed. Three years ago, "Above and beyond the law" asked the Administration to be more flexible in non-routine situations or when vulnerable citizens were involved. In my 2002–2003 annual report, I stressed the need to "go the extra mile," i.e., always take the time to view a situation as a whole and thoroughly analyze all issues before deciding. Last year, I noted that every opportunity is a good one to "build on common sense" and not apply the rules automatically, and that one must keep in mind the spirit of the laws and programs one applies.

These themes overlap and complement one another. In some ways, they can be summed up in a question that Administration officials should keep in mind when they prepare to decide on issues affecting citizens: "This could happen to me." The 2004–2005 report invites all to remember: "This could happen to you."

Admitting mistakes is hard

As in previous years, I have seen cases where the parties were treated with excessive severity, particularly when taxpayers owe the government money or in the case of people who have cashed social assistance benefits to which they were not entitled. Unfortunately we still see situations where a more open-minded approach would have been desirable.

I must also draw attention to the slow pace at which solutions to longstanding problems are implemented. For example, the new *Act respecting correctional services* adopted three years ago still has not been concretely applied. The situation continues to deteriorate in detention centers, and once again I deplore the dead end towards which we are heading. Is it not worrying that a detainee awaiting trial for almost a year is transferred to a federal penitentiary after complaining about the poor prison conditions? In terms of child support collection, Revenu Québec, despite my repeated entreaties, has still not succeeded in developing clear and easily understood account statements for the people for whom they are intended. It thereby continues to create confusion and problems for numerous child support creditors and debtors. This could happen to you.

Another cause for concern: the unwillingness of certain departments to admit mistakes and, above all, make the necessary corrections. I am aware that the Administration makes thousands, if not millions, of all kinds of decisions each year and that it processes an even greater number of transactions. Mistakes are therefore inevitable. But why is it sometimes so long and so hard to admit a mistake? Why this ongoing hesitation and even obstinate refusal to make amends? Why this tendency to pass the buck to other departments and organizations to the detriment of citizens, who are kept waiting?

I cite as an example the case of a citizen imprisoned for non-payment of a fine, even though it had long been paid off. The two organizations involved—Ministère de la Justice and Sûreté du Québec—each devoted considerable energy to washing their hands off the affair. During this time, the citizen awaited compensation in vain, even though it was entirely owed to him, as all parties acknowledged that the imprisonment was illegal given the circumstances. It took three long years for the citizen to be compensated.

A student suffered a similar fate. He lost a school term after Ministère de l'Éducation assigned him the wrong exam mark. MEQ, which corrected its mistake, then tried to shift responsibility for the student's lost school term to the school board.

I must also mention the case of the taxpayer against whom Revenu Québec refused to withdraw its claim. The government first informed the man that he was fully entitled to a refund for child support overpayments. Three years later, Revenu Québec demanded that he in effect refunds the refund, after being informed by Ministère de l'Emploi, de la Sécurité sociale et de la Famille that the man owed it money. Revenu Québec refused to accept the consequences of its error and the delay, claiming that it was not responsible as it was acting on behalf of a third party. Such an attitude worries me. Effectively, as part of the reforms to modernize the government, the idea of creating central agencies or mechanisms to act on behalf of departments or agencies in certain areas has been discussed. Thus could Revenu Québec, for example, be entrusted full responsibility for collecting amounts owed the government. Does this mean that you could then claim that you were acting on behalf of someone else to duck responsibility in case of an error or omission? To me this seems an unacceptable way of doing things. This could happen to you.

Lastly, I am also concerned about the fate of citizens whose health deteriorates after a motor vehicle accident, while they are receiving or have already received compensation from Commission de la santé et de la sécurité du travail (CSST) for a similar injury.

The Société de l'assurance automobile du Québec (SAAQ) and the CSST, instead of jointly reviewing a case as stipulated by law, too often seek to shift responsibility for the deterioration to the other, to the detriment of citizens, who find themselves turned down by both organizations.

A fundamental concept: Equity

In their dealings with government, citizens reasonably expect to be treated not only according to the letter of the law, but also with equity. In 2004–2005, I endeavored to explain and promote this concept, which is one of the cornerstones of the Protecteur du citoyen's activities, within government departments and agencies. This concept sometimes frightens, as it is more complex than simply applying the letter of the law.

Equity saves us from making decisions or performing actions that, though legal, are unreasonable insofar as they contradict common sense and are instinctively dismissed when we consider the extent of their harmful consequences. Applying the law too strictly can sometimes even go against the legislator's intent. We then readily say "it's obvious this was not what was wanted."

From experience, I know that many people hesitate to implement this notion of equity, wrongly believing that it runs counter to the principle of equality before the law. But this is not the case. Equality does not mean uniformity. By taking into account mitigating circumstances and the excessive impact certain decisions could have on certain people, particularly when they are fragile and vulnerable, the government does not contravene the principle of equality. On the contrary, it helps to better attain the goal of the law, regulation, or program in question. Different situations must be treated differently. Just as exceptions prove the rule, equity proves the law by rendering it complete. It is when it comes time to decide "in all equity" that decision makers are most justified in remembering: "This could be me." This helps them take another perspective and be open minded without being any less objective. Equity and objectivity can coexist and produce excellent results.

I agree that this way of dealing with situations that are by definition exceptional is less cut-and-dry and therefore more demanding than blindly applying the rules. It requires common sense and forces us to consider the spirit of the law. I remain convinced that it will be impossible to achieve the goals of the *Act respecting administrative justice* if we always insist on considering the strict legality of things. For my part, I am firmly resolved to continue raising Administration awareness on this issue.

Key players: Complaints offices

The existence and proper operation of mechanisms for processing and following up on complaints submitted to government departments and agencies has long been a main concern of the Protecteur du citoyen. In recent years, the Protecteur du citoyen has worked hard to promote the use of complaints offices and support them to the best of its ability. I still believe the people who work in these offices are crucial, key players both in correcting injustices against citizens who have suffered errors or unfair treatment, and in making recommendations to help improve current standards and service delivery methods.

For this reason, over the past year, I commissioned a study to obtain a picture of the current state of complaints offices within the government apparatus.

The study looked at 31 departments and agencies and was conducted by the staff of my office in cooperation with the complaints offices. It leads me to the following observations and comments:

I found that the notion of "complaint" is more or less the same in most offices, where it has the broad meaning I ascribe, i.e., "the expression of dissatisfaction with respect to services received." This is the definition I proposed in the guide I published in 2001: *A Legitimate, Credible Complaints Office.*

The vast majority of complaints offices have a number of ways of advertising themselves to the public in general and their clientele in particular. Websites, interactive phone systems, and employees' obligation to notify citizens of this service are the most frequently used methods. This attests to a definite desire to make the quality of services provided to citizens a priority, as required by the Public Administration Act. Still, visibility should be improved in certain respects.

I was also happy to note that complaints offices make their services easily accessible. Verbal complaints are accepted by 90% of government offices, and 83% have toll-free numbers. In short, people do not have to jump through hoops to express their dissatisfaction.

I also found that the names of complaints offices vary greatly by department or agency, ranging from "Complaints Department" and "Quality Improvement Office" to "Complaints Processing Branch," "Customer Relations," "Services Commissioner," and "Department Complaints Coordinator." Might this diversity be a source of confusion for citizens? Without going so far as to standardize the name, I believe the case can be made for offices to include the word "complaint" in their title.

Last, a statistical compilation on complaints received in 2002–2003 compared to 2001–2002 showed that while the Protecteur du citoyen received slightly fewer complaints regarding the 31 departments and agencies covered by the study, there was an increase in complaints sent directly to their respective complaints offices.

I am delighted that citizens are increasingly bringing their complaints directly to the departments and agencies, and that many problems are resolved there to their satisfaction. Yet this in no way diminishes the role and prerogatives of the Protecteur du citoyen as a final and independent recourse. In this regard, I recommend that all department and agencies complaints offices inform citizens who do not obtain satisfaction that they may contact the Protecteur du citoyen.

A new area of jurisdiction: Health and social services

I applauded the bill to broaden the jurisdiction of the Protecteur du citoyen by entrusting it with the duties currently assumed by the Health and Social Services Ombudsman.

Indeed, in 1991 the Committee on Institutions proposed having the final level of complaint for health and social services report directly to the National Assembly.

The decision the government is about to make is certainly significant for network users, who will enjoy not only an improved complaints processing system in healthcare institutions, but also an independent and impartial final recourse that can take their case right to the National Assembly if needed.

The drawbacks of modernization

In another vein, I regret that changes in structure made with a view to modernizing government might revoke the Protecteur du citoyen's jurisdiction in areas where it was previously active.

For example, in 2004–2005 the government decided to entrust a new agency with the duties carried out by Ministère de la Culture et des Communications employees with respect to access to historic documents. Although this agency offers direct service to citizens, it is not accountable to the Protecteur du citoyen because it is no longer part of the civil service.

In vain, I drew attention to this chipping away at the Protecteur's authority, which seems contrary to the objectives of the Public Protector Act adopted in 1968. I also denounced the Protecteur du citoyen's lack of jurisdiction over new public-private partnerships. Because this agency's mission was later modified and government departments and agencies will ultimately be responsible for these partnerships, the Protecteur du citoyen can still go to them, if necessary.

I am not against creating new types of government structures that depart from the traditional department and agency model. It seems inevitable that these new approaches will gain ground in the coming years. But must this lead to a gradual erosion in the jurisdiction of the Protecteur du citoyen, making it unable to handle the complaints of citizens dissatisfied with services rendered? This could happen to you.

In keeping with the spirit of the Public Protector Act, I urge that when these structural changes are made, we make sure to adopt the legislative provisions necessary to maintain the Protecteur du citoyen's jurisdiction.

The commitment to public service conveyed in departments and agencies "service statements," the proliferation of complaints offices, and recognition of the added value of the Protecteur du citoyen in the crucial health and social services sector are definite pluses. Despite all manner of obstacles and constraints, despite hesitations and missteps, we are making progress thanks to people with an innate sense of justice, equity, transparency, and respect. I hope their ranks increase as they continue to address the problems submitted to them, always keeping in mind this basic thought, "This could happen to me."

SOME OF THE PROTECTEUR DU CITOYEN'S INTERVENTIONS IN 2004-2005

The cases described in this report were selected to demonstrate the wide variety of fields of intervention of the Protecteur du citoyen and the impact of the interventions that were made.

The names of the ministries and government agencies mentioned in this report are those used as of April 1, 2004 and do not take into account changes made following the cabinet shuffle of February 18, 2005.

MINISTRIES 3.1

The ministère de l'Éducation 3.1.1

Corrective measures required regarding school fees paid by parents

In its 1999-2000 Annual Report, the Protecteur du citoyen expressed its belief that the fees paid by parents should be limited, in particular with regards to teaching material and educational trips required in the course of education programs. It therefore proposed that the Education Act be amended because administrative incentives had prevented achieving this objective over the years.

◀ *The Protecteur du citoyen had already formulated its recommendations.*

The complaints received by the Protecteur du citoyen over the last few years convinced it that there are still serious shortcomings in terms of respecting the right to free education, which is recognized by law. Therefore, the Protector intervened yet again with the Ministère at the beginning of 2004. She requested that the Ministère give further thought regarding the fees, legal as well as illegal, that are demanded of parents. She also remarked that the phenomenon in certain programs is even more serious than originally thought because the very access to these programs for all interested and eligible children may be jeopardized.

◀ *The situation is not improving.*

A few weeks later, the Administration informed the Protector of the creation of a working group composed of parents and representatives from the school network and the Ministère on this issue. The group concluded its work during the summer and noted that, despite the Ministère's administrative guidelines, the annual 15-million-dollar funding and the measures that a significant number of schools and school boards had adopted to reduce costs, these costs had nevertheless increased by no less than 44% over a four-year period. In short, the principle of free education continues to be eroded.

◀ *A working group was formed.*

The minister is open to capping fees per child.

The minister reacted favourably to the conclusions and recommendations of the working group. He requested further investigation of specific problems and a proposal for "capping fees per child for educational material". [liberal translation][1]

The Ministère must ensure that the established limits are respected.

The Protector expressed to the Administration her satisfaction in this matter. Additionally, she was pleased that the Ministère asked the school boards to abolish illegal practices concerning school fees. Finally, she reminded the ministère de l'Éducation of its responsibility to define the scope of the principle of free education and to ensure that the established guidelines are respected.

A confusing document

Studies that are not recognized by employers.

A number of individuals contacted the Protecteur du citoyen after some employers refused to recognize training provided under the authority of the ministère de l'Éducation.

A certificate is not a diploma.

The investigation revealed that it wasn't the case. Actually, the Training Certificate that they received was not a departmental document. These certificates were given to students after successful completion of one of the various professional training programs offered by the school boards. However, these programs did not lead to a diploma issued by the Ministère.

The Ministère's logo, however, appears on the certificates.

The Ministère, however, supplied a form bearing its logo to the school boards, which served to legitimize the training offered by the school board. Such a practice could only create confusion, leading citizens to believe that they truly held a diploma issued by the Ministère.

The certificates were withdrawn.

At the request of the Protecteur du citoyen, the Administration ceased to supply the forms in question to educational establishments starting with the 2004-2005 school year. Furthermore, the institutions were asked to destroy the forms that they had in stock and produce their own certificates.

Excessive delays in receiving diplomas

Despite improvements over the years.

In 2002, the Protecteur du citoyen noted in its report that some citizens experienced problems in getting their diploma, transcripts or even a copy of these documents. It noted the tendency of the Ministère and educational institutions to blame each other when such situations occurred, as well as to refer the concerned party to the other authority involved in the matter.

1. MINISTÈRE DE L'ÉDUCATION, Press release: *Le ministre Pierre Reid accueille favorablement le rapport du groupe de travail sur les frais exigés des parents*, Québec, August 31, 2004, p. 1.

Subsequently, the Ministère implemented several methods in order to process more rapidly the information supplied by educational institutions and to quickly correct errors and decrease the time required to issue official documents. The Ministère hired more personnel to achieve this and invested in their training.

The problem resurfaced yet again in 2004-2005.

However, during the last year, the Protecteur du citoyen received new complaints from students or alumni who were unable to obtain the diploma to which they were entitled, creating a situation that could lead to negative consequences.

A citizen requested her diploma for two years.

For example, a citizen appealed to the Protecteur du citoyen because she had still not received her diploma of collegial studies in the summer of 2004, even though she had satisfied all the requirements in May of 2002.

Despite assistance from the Ministère, shortcomings in the college's computer system continued.

The investigation revealed that various organizational problems in the college's departments, such as the poor state of the computer system for data transmission, had caused the situation, which affected other students and had been lingering for many years. Informed of the situation in 2003, the Ministère provided technical support to the college so that it would be able to perform the task. Despite this intervention, the problem was still present a year later. Few weeks after the Protecteur du citoyen inquired about the problem with the college, said citizen received her diploma.

This time, coding differences were the culprit.

In another case, a citizen that had completed the requirements of a diploma of vocational studies two years prior without having received the diploma filed a complaint with the Protecteur du citoyen. The Protecteur du citoyen then learned from the Ministère that the transcript was missing twelve of the thirty units required for the diploma; however, the same missing units appeared in the educational institution's records, which it alleged having sent to the Ministère. In fact, the problem might have resulted from coding differences between the two computer systems. Once again, the situation was quickly resolved following the intervention of the Protecteur du citoyen.

Information not transmitted or not received.

Finally, in another similar case, a citizen had been asking without success for almost two years for a high school diploma completed in an adult education centre. The investigation revealed that training results were absent from the Ministère's files. At the request of the Protecteur du citoyen, the two organizations contacted each other and the citizen received his diploma a few weeks afterwards.

The buck has been passed too often.

After reviewing the complaints brought to its attention regarding this kind of situation, the Protecteur du citoyen found that coordination problems still exist between the Ministère and educational institutions. It is often difficult and sometimes impossible to determine, between the Ministère and the educational institution, which organization is primarily responsible for the errors and omissions that are found, each party pointing to the other.

Ultimately, the Ministère is responsible.

The Ministère justifies its lack of alacrity in its actions with respect to educational establishments by citing their administrative independence. The Protecteur du citoyen does not question this principle, but it must point out that the Ministère is ultimately responsible for certifying studies and that the diplomas are issued under its authority. The Ministère should therefore not hesitate to intervene when it becomes aware of specific, or even worse, structural shortcomings.

The Ministère must assume the financial consequences of its errors, omissions or delays

He was refused admission to college.

Finally, it should not hesitate to recognize its mistakes and repair the damage it has caused, which, at times, it is reluctant to do, as demonstrated by the following case. Following an examination given by the Ministere in June of 2003, a student was informed that he failed the Secondary V French exam. He also failed it on a second attempt. Since passing the exam is a prerequisite to a program of collegial studies, he was not eligible to start in the fall trimester.

The Ministère corrected its error, but the citizen had to wait until January.

He took measures to have the school board verify the result obtained in the first exam. He was informed that he received a grade of "0%". Convinced that he could not have got such a grade, he filed a request on August 25 with the Ministère for a review. The Ministère found that the citizen's grade had been mistaken for another student's grade. In fact, he had passed the June exam. The Administration made the necessary corrections, issued the high school diploma and delivered the documents to the school board on September 10. The school board received the documents on the 22nd of the same month and immediately forwarded them to the citizen. Unfortunately, it was too late. Since it was too far advanced in the trimester and the risk of failing was very high, the college maintained its refusal. The student could only be admitted for January. Believing that his rights had been violated, the student brought his case to the attention of the Protecteur du citoyen.

Financial compensation for time lost was justified.

The Protecteur du citoyen concluded that the responsibility for the error lay with the Ministère. In addition, despite the urgency of the situation, the department had neglected to immediately inform the student of the adjustments made to his school records and the issuance of his diploma. Financial compensation should therefore be disbursed to the citizen because the course of his studies was unduly interrupted. The deputy-minister replied positively to the Protector's request, and a fair and reasonable amount was offered in compensation.

Improvements to the transmission process of official documents.

In order to prevent similar situations from occurring, the Ministère also made modifications to the transmission procedure of official documents that have been modified due to a correction.

After all was said and done, the Protecteur du citoyen can only be pleased with the results. However, it emphasizes that it is sometimes difficult for the Administration to accept the consequences of its actions.

■ Student Financial Assistance Program

New computer system and a change in policy results in a chaotic year

◂ *Major changes to the computer system...*

In April of 2004, a new computer system was launched in order to improve the management of the entire financial assistance system. One of the goals of the improvements was to permit monthly financial assistance payments. This measure, previously recommended by various sources, one of which being the Protecteur du citoyen, would allow students to better manage their budget throughout the year.

◂ *...led to long delays.*

However, from the moment that the system went live, it experienced a number of major failures. The Protecteur du citoyen received complaints from students about long processing times and delays in receiving their financial assistance payments, causing not only anxiety but also real financial problems.

The Protecteur du citoyen's intervention showed that, due to various faults, the system that was supposed to have been functional in April of 2004 had experienced a two-month delay. Therefore, by May 27, 2004, 11,000 applications were processed out of a total of 45,000. Additionally, an average of 2.5 errors or faults were found per file.

◂ *According to the Administration, planning had been nevertheless adequate.*

When questioned on these failures, the Administration maintained that it acted according to best practices and respected standard testing and certification procedures for implementing such systems. According to the Administration, despite high-quality planning, unexpected elements may still appear because of the extreme complexity of the technologies involved.

◂ *The adoption of a new policy added to the computer problems...*

In addition, a new policy announced by the minister at the end of April changed the proportion of financial assistance granted as loans and as bursaries to be distributed in September of 2004. These changes required new modifications to the computer system and led to additional complications.

◂ *...which, in turn, led to other inconveniences.*

The Protecteur du citoyen noted that in addition to processing delays, other problems had been created by this situation: the front-end telephone and information services were overloaded for several weeks, inaccurate information was provided about the nature of the modifications to the program, and delays also appeared in other programs, such as regarding deferred payments.

◂ *Corrective measures were adopted.*

The Ministère took measures to overcome these problems. Personnel was assigned to front-end and information services as well as file processing. The Ministère granted provisional aid to many students while their application was being processed. By the end of November of 2004, 8,000 files remained from a total of about 140,000 applica-

tions received. The implementation of monthly financial assistance payments was delayed to January of 2005 from its original starting date in September of 2004. The Protecteur du citoyen intends to keep a watchful eye on the operations of this new procedure.

Nonetheless, citizens suffered damages.

When a system that influences the quality of client services undergoes major modifications, the intent of the law should not be sacrificed in the process. It is true that the Student Financial Assistance Program acted openly and with flexibility to minimize the delays in granting assistance. It reacted positively to the Protecteur du citoyen's interventions. It called upon all network partners to give and receive information in order to find solutions and correct faults in the system. Nevertheless, the Protecteur du citoyen noted that despite all good intentions, a significant number of students suffered from shortcomings in the management of the Student Financial Assistance Program.

Budget cuts: comments to the minister

In September of 2004, the loans and bursaries budget was cut by 103 million dollars, which raised the limit of student loans and lowered the amount of bursaries awarded. The Protector gave her comments to the minister on the repercussions that such a measure could have not only on students' indebtedness but also on access to education and abandoning of studies. She also questioned the coherence of such a measure in the government's larger framework of priorities of fighting against poverty, supporting families and developing regions.

Careful verification was required

The Administration claims $32,000 from a citizen.

The Ministère claimed over $32,000 from a citizen for student loans wich were incurred over 20 years ago. The citizen was convinced that he did not owe this amount because it had been paid by his late mother. He brought his case to the attention of the Protecteur du citoyen.

The statute of limitations had expired; the claim was abandoned.

The investigation could not determine if the citizen's mother had actually paid the debt. The financial institution did not keep records of transactions for accounts that had already been closed for a long time. Upon studying the file, the Protecteur du citoyen noted that the Ministère's claim was made after the maximum five-year prescription stipulated by law. The debt had passed the statute of limitations and the claim was abandoned.

Legality of claims must always be carefully verified.

The Protecteur du citoyen again requested the Administration to be very vigilant in these matters and to always carefully verify the legality of the claims they make. The Protecteur iterates that, in its 2002-2003 Annual Report, it had already brought the Ministère's attention to the problem. The Administration had not verified a citizen's actual date of withdrawal from studies. This negligence led to a claim for $26,000 that did not have legal merit.

The ministère de l'Emploi, de la Solidarité sociale et de la Famille

3.1.2

Once again this year, the Protecteur du citoyen noted that the ministère did not always give enough consideration to the characteristics of its clientele.

■ Collection

An improved procedure

◂ *Demands made of weak or vulnerable individuals.*

In its last Annual Report, the Protecteur du citoyen applauded the ministère's intent to follow up on its suggestion to implement a special collection procedure regarding individuals who have become particularly weak and vulnerable, either because of their age, a difficult family situation or their physical or mental health. In the case of recent immigrants, problems may stem from isolation, communication problems or a lack of knowledge of the workings of their new society.

In October of 2004, pursuant to a directive given, a special procedure was implemented to process these cases. When a collecting agent identifies such a situation, the agent must gather all necessary information from the individual concerned as well as from any third parties. The agent must then transfer the file to a group of experts who can then implement a solution adapted to the circumstances, all under the discretionary power conferred to the minister by law. The practice is in its infancy but seems quite promising.

But not always applied

◂ *However, not all cases are identified.*

However, several cases that have escaped the attention of the ministère have subsequently been brought to the attention of the Protecteur du citoyen, which arrived at a satisfactory resolution in most cases.

For example, there was the case of a citizen who had been suffering from a severe mental illness for twenty years and who was asked to reimburse benefits because of undeclared income stretching back several years. Due to her health problems, the citizen could not understand the ministère's intent. She believed that she was the victim of a vast governmental conspiracy directed against her, which aggravated her anxiety and general health. The ministère cancelled the debt, which amounted to nearly $39,000.

There was also the case of a citizen who was treated for depression following the death of her mother and older brother and the suicide of her younger brother. Under these circumstances, she had neglected to pay a $400 debt. The ministère then proceeded to seize her car and computer and warned that they would be sold by court order if the citizen did not pay off her debt, to which were added seizure fees of $600. Subsequently, the ministère seized her $520 tax refund. The Protecteur du citoyen succeeded in having the balance of the debt cancelled and the citizen recuperated her property.

An even more challenging situation consisted of an immigrant who had sponsored her daughter in order for the child to join her mother in Canada. When fourteen years old, the daughter gave birth at home, unaware that she had been pregnant. The police investigation revealed that she had been sexually assaulted by her mother's friend. The ministère granted assistance benefits to the adolescent. However, because of the sponsorship agreement, the ministère subsequently claimed from the mother all the funds disbursed to the daughter, which totalled over $16,000. Under the circumstances, the Protecteur du citoyen asked that the claim be waived, which the ministère agreed to do.

Excessive seizures

Common sense should be the guide.

As was the case in previous years, the Protecteur du citoyen also had to intervene in other situations that did not necessarily involve especially vulnerable individuals, but that showed a lack of flexibility and excessive zeal in using special collection measures such as the seizure of salaries, bank accounts or tax refunds.

The return to work was jeopardized.

For example, the Protecteur du citoyen asked and was granted a reduction from 30% to 15% in the salary garnished from a former recipient who returned to work after her son's suicide. After deducting the amount garnished to repay her debt, the citizen was barely receiving more than when she had received as last resort assistance. As a result, she was thinking of leaving work.

Citizen's reasonable expenses must also be taken into account.

A reduction in the amount garnished was also granted after the Protecteur du citoyen convinced the ministère to take into account some of a citizen's expenses when calculating his or her budget, such as the amount paid to reimburse debts.

A hasty seizure.

In a final case, the Protecteur du citoyen found that a seizure was conducted on the bank account of a single parent, one day before a weekend and while a repayment agreement was still in effect. This effectively left the family without resources for several days.

In conclusion, the Protecteur du sitoyen remarks that the specific circumstances of each situation must be taken into consideration when evaluating the case and that it is always appropriate, as the title of its last Annual Report states, to "Build on common sense".

Justified to quit her job

An abusive penalty

Even though it is not strictly speaking a collection measure, the Protecteur du citoyen tells of the case of a citizen whose monthly benefits were reduced by $150 because she quit her job. It was necessary for her to leave work following the violence she suffered from her former spouse. For security reasons, she had to move. The Protecteur du citoyen convinced the Ministère to reinstate the citizen's full benefits and to reimburse the amount already deducted.

"Going the extra mile" was called for

Guidance is required

The following case demonstrates the need to sometimes assist citizens as they go through administrative procedures, especially if there is good reason to believe that they are unfamiliar with the system, unaware of the recourses available to them or do not intend to use the procedures for whatever reason.

An application for assistance was not followed-up

A young 18-year-old woman was allowed entry into Canada as a refugee. She did not speak English or French. She applied for assistance at an employment centre specializing in asylum seekers. Her father accompanied her and acted as interpreter. According to standard procedure, the father was asked to fill out a form used to determine the amount that he may be asked to contribute as the parent of a "dependent" child, as defined by the regulation. The gentleman categorically refused and the interview ended. The young woman was not informed by the Administration that her application was refused. Hearing of the existence of the Protecteur du citoyen, she contacted the institution four months later.

The situation was corrected

The Protecteur du citoyen was able to understand what had happened thanks to one of its employees who speaks the young woman's language fluently. Actually, the ministère should have considered the application even though the father refused to fill out the form. In such a case, if all other eligibility requirements are met, then the application is still accepted, with the ministère reserving itself the right to assert the claimant's rights with the parents concerned.

The Protecteur du citoyen's intervention allowed the young woman to receive the assistance that she was entitled to receive retroactively to the day she submitted her application.

Supplementary information to the "Return to Work Supplement"

A citizen inquires about his eligibility to a program.

A citizen who had received welfare benefits rejoined the workforce. He asked an agent at a local employment centre if he was eligible for the "Return to Work Supplement". The program provides a $500 grant to assist individuals with expenses related to reintegrating the work environment.

The citizen was informed that he was not eligible because the employment he took was less than 30 hours per week. The citizen therefore did not submit a formal application.

Incomplete information is wrong information.

A few months later, he found another job working 35 hours per week. This time he duly filed an application but was again refused because his request was submitted more than 30 days after his return to work.

However, he learned that he had previously been misinformed. The eligibility criterion of a minimum of 30 hours per week was not absolute. In fact, a citizen, even though working less than 30 hours per week, may be eligible for the supplement if his weekly wages are equivalent or exceed 30 hours of work paid at minimum wage. The citizen therefore would have been eligible for the supplement as soon as he had returned to work.

Refusal to reconsider.

Despite statements made by the citizen indicating that he had been given the wrong information, the ministère strictly applied the rule stating that an application must be made within 30 days of starting work.

Thanks to the Protecteur du citoyen, the necessary corrections were made.

Informed of the situation, the Protecteur du citoyen verified the information provided at different local centres of employment regarding the supplement program. It found that it had to insist in several cases to receive complete information, while other centres gave incorrect information; and even their Web site did not provide complete information. The citizen's version of the events was therefore completely plausible.

Following the intervention of the Protecteur du citoyen, the citizen was admitted to the program. The Administration also agreed to remind all local employment centres to make sure that their employees provide complete and accurate information.

Furthermore, the ministère's Web site has since been updated to provide more comprehensive information on eligibility criteria for the supplement.

An unacceptable policy

A citizen received $160 in monthly support payments, while the ministère paid her $390 in benefits, for a total of $550, which corresponds to the official benefit schedule.

The citizen received support payments. The ministère added its part.

A decision retroactively cancelled the support payments. The citizen therefore owed $2,000 to the ministère du Revenu which, in accordance with the system in effect, had been forwarding to the citizen the monthly payments made by the debtor. The citizen therefore requested a refund from the ministère de l'Emploi, de la Solidarité sociale et de la Famille, in order to repay the debt owed to the ministère du Revenu du Québec. The ministère refused and the citizen brought her case to the attention of the Protecteur du citoyen.

Support payments are cancelled retroactively.

The investigation revealed that, contrary to its previous practice, the ministère no longer increased benefits following a retroactive decision that cancelled or reduced support payments. The new practice evolved from a recent interpretation of an article of the "Regulation respecting income support".

Regardless of the interpretation given to the article in question, the Protecteur du citoyen believes that the ministère's policy is unacceptable. One must understand that in the absence of support payments, the citizen would have been eligible for the standard $550 in benefits. The delays in the judicial process are such that a decision to cancel or reduce support payments is made long after the original request is filed to review the payments. In fact, the ministère has identified about ten other similar cases, which were brought to its attention.

If the citizen had not been receiving support payments, the ministère would have granted full benefits.

The Administration should accept the consequences of court decisions. Benefit calculations for the relevant period must be reviewed to exclude support payments to be reimburse from the citizen's income. Other situations should be reconsidered using this same principle. Is it even necessary, then, to mention that the ministère's policy harms individuals whose financial situation is by definition precarious since their meagre support payments need to be supplemented with welfare benefits? .

Corrections to be made.

The Protecteur du citoyen is waiting for a response from authorities regarding this issue.

3.1.3 The ministère de la Justice

And the citizen in all this?

The amount of the fine was paid.

A citizen was fined $30 for a minor violation of the Highway Safety Code. As stipulated by law at the time, since the fine remained unpaid, the collector of fines obtained a warrant of committal of the citizen.

Two months later, the citizen was stopped by a police officer, who informed him of the issued warrant. The citizen immediately paid the amount of the fine and additional fees.

The citizen was nevertheless incarcerated for 2 days.

Eight months later, he was again stopped by the police. He was informed that a warrant of committal was issued for him and was incarcerated for two days. The citizen later learned that it was the same warrant for which he had been stopped eight months prior. Outraged, he filed a complaint with the Protecteur du citoyen in 2001.

Not us, it is them.

The Protecteur du citoyen could only take note of the harm already suffered by the citizen. It concluded that a monetary compensation should be disbursed. The investigation into the matter, however, could not clearly establish whether the error lay with the ministère de la Justice or with the Sûreté du Québec, which falls under the authority of the ministère de la Sécurité publique. The steps taken by the Protecteur du citoyen with the two organizations proved unsuccessful, as both strived to deny their responsibility in the matter.

The Administration was now using limitations as grounds for refusal.

The Protector then contacted both Deputy Ministers, reminding them that the harm caused was clearly real and that if it remained difficult to pinpoint their respective responsibilities, then under the circumstances, both organizations would have to contribute to the compensation.

The Protector received a response from the ministère de la Justice. To her great surprise, the Administration used limitations as grounds to refuse compensation to the citizen. Because the citizen had not contacted the court within the required timeframe, the Protector could no longer claim monetary compensation on his behalf.

The Protector considers this position unacceptable.

She replied to the ministère that a request for compensation had been made regarding the matter two years earlier, which had been followed by several other steps. She also reminded the ministère that the Protecteur du citoyen's enabling legislation gave it the role and mission to "intervene not only in issues of legality, but also in matters of reasonableness and equity", therefore, she could not "accept the reasons provided to refuse the compensation".

A few weeks later, the Protecteur du citoyen was informed that both administrations had accepted to jointly disburse a compensation amount of $5,000 to the citizen and that the latter was satisfied with the settlement received. Moreover, there was a positive follow-up regarding a second recommendation to establish a mechanism to avoid repeating similar errors that may lead to serious harm to citizens.

The citizen finally received compensation.

The Protector may certainly be satisfied with the outcome. She remains concerned, however, when considering the extent and duration of the steps that were necessary to finally obtain justice for the citizen. Is it always acknowledged that citizen's rights and their legitimate expectations must take precedence over administrative considerations?

The citizen above all.

3.1.4 The ministère des Relations avec les citoyens et de l'Immigration

Commendable and questionable means

Processing of some records can take over five years.

The Ministère did not increase personnel assigned to processing records.

Diversity criteria are not provided for in the law.

Measures were finally taken.

Legislative modifications were made.

Registrar of Land Titles

Information system and storage

Encryption to guard at the trigger

... as in the case of a citizen waiting for a birth certificate...

The Protecteur du citoyen thus intervened when an individual was refused any information on the follow up of a request for a birth certificate made on his behalf by a social worker. The social worker was abroad on vacation and the citizen had an urgent need for the certificate in order to obtain a health insurance card. Security was given to justify the refusal to give any information whatsoever on the progress of issuing the certificate. According to the employee, the information could only be given to the person who had made the request. The Protecteur du citoyen's intervention quickly resolved the problem.

... or that of a woman who wanted to use her husband's name.

The Protecteur du citoyen also called upon in the case of a citizen born in Québec but who had adopted the name of her husband after getting married abroad. Her request for a birth certificate under her new surname was refused. The law, however, specifically provides for the recognition of acts issued by a foreign civil status authority. Made aware of the situation by the Protecteur du citoyen, the Administration quickly agreed to the citizen's request, which could have been processed more rapidly had the front-line employee forwarded the file to a superior.

... or parents who wanted to feminize the father's surname for their daughter.

Based on the same legal provision, the Protecteur du citoyen was able to arrange for a girl born in Québec to adopt the feminine linguistic form of her father's surname. Married abroad, the mother had adopted the feminized version of her husband's surname as allowed by law in their place of marriage. Because the mother's surname had been modified by a legal act emanating from a foreign civil status authority, the child could thus also use the feminized form of her father's surname. As in the preceding case, it would have been preferable that the person at the Registrar's reception had brought the problem to the attention of a superior. Following these two interventions, the Protecteur du citoyen was assured that in the future, the Registrar of Civil Status would accept the new family name of a citizen who, resulting from a marriage abroad, decides to change her surname to use her spouse's surname.

Further thought required

This last situation led the Protecteur du citoyen to give thought to the irritants that may exist in the case of certain cultural communities, from the application of the Civil Code of Quebec, which provides that only the surnames of the father or the mother may be used for the name of a new child. Such provision makes it virtually impossible, apart from exceptional cases like those described above, to use the feminized form of the father's surname in the surname of female children or the masculine form of the mother's surname for male children. Yet, this way of doing things forms part of the customs of some nations, such as Russia.

An irritant for members of certain cultural communities.

For people originating from these countries, the use of the masculine form of the father's name for a girl or of the feminine form of the mother's name for a boy is not only incomprehensible but also blatantly ridiculous.

The Protecteur du citoyen believes that further thought should be given to the opportunity of amending Article 51 of the Civil Code in order to respect cultural differences. If the inconveniences prove to be minor or nonexistent, it would be appropriate to proceed with the necessary legislative arrangement. In that regard, the Protecteur du citoyen would like to point out that after deliberating on a problem which looked quite similar to the above-mentioned case, the Québec Court of Appeal did not emit any objection to a man using a first name that had traditionally been reserved for women until then.

A provision of the Civil Code should be modified.

3.1.5 The ministère des Ressources naturelles, de la Faune et des Parcs

Illegal fees yet again

Some citizens contested certain fees imposed by an organization.

Some individuals operating commercial guiding services for river fishing were charged administrative fees for the issuance and renewal of commercial permits by an organization called "Gestionnaire des rivières à saumon du Québec". These citizens contested this organization's right to impose such fees. They brought the matter to the attention of ministerial authorities, who told them that the fees were valid since it had been decided that the administrative processing of such commercial permits would be performed by a third party.

The Société de la faune et des parcs delegated a power that it did not possess.

The case was brought to the attention of the Protecteur du citoyen, which noted that an agreement did in fact exist between the organization and the Société de la faune et des parcs du Québec, a public agency under the authority of the government of Québec. However, the Protecteur du citoyen also noted that no provision of "An Act respecting the conservation and development of wildlife" authorizes the Société to collect fees for these operations.

Only citizens who would fill a claim would be reimbursed.

The Protecteur du citoyen contacted authorities at the Société to inquire about measures that were planned to remedy the situation. They informed the Protecteur du citoyen that they did not intend to impose these fees at the moment, but that they would be proposing a legislative amendment in order to charge these costs in the future.

The Protecteur du citoyen insisted on reimbursement for all affected citizens, which was done.

The Protecteur du citoyen was not satisfied with such a half-measure. The Protector contacted the authorities at the ministère des Ressources naturelles, de la Faune et des Parcs, which was now overseeing the file since the Société was defunct. The ministère agreed to reimburse all the citizens that paid these illegal fees, which totalled more than $14,000.

It was not the first blunder of this nature by the Administration.

It should be noted that this was not the Administration's first such blunder. In 1996-1997, individuals mandated by the ministère de l'Environnement et de la Faune were empowered to collect fees directly from hunters who were registering big game, even though this practice was not provided for by law. This situation was exposed by the Protecteur du citoyen and corrected thanks to its intervention.

The Protecteur du citoyen iterates that only the Parliament can impose fees.

This is not an issue of secondary importance. In fact, as the Protector remarked in her intervention with the ministère, "The principle of 'rule of law' constitutes one of the building blocks of our society and applies not only to citizens, but also to the Administration and its agents, who cannot exercise powers other that those conferred upon them by legislation and common law. Moreover, it is clearly established by law that the power to impose a fee or tax must be granted by Parliament specifically and explicitly".

The Protecteur du citoyen dares to hope that there will be no other similar occurrences.

On June 30, 2004, the Minister of Revenu made official the transformation of the ministère du Revenu du Québec into an agency called Revenu Québec. This agency will uphold the ministère's mandates and responsibilities, which are:

- Ensure that taxes are collected;
- Manage the collection program regarding support payments;
- Manage tax-related social programs and any other government program dealing with the redistribution of funds; and
- Advise the government on modifications that should be brought to fiscal policy with the goal of improving governmental policies.

■ Fiscal policy

Flexibility: a painful learning curve

While the Protecteur du citoyen's interventions over the years resulted in more flexibility in applicating fiscal policies, it has witnessed this year new examples of administrative rigidity and restrictive interpretation of the law and applicable regulations. This is especially true in cases where penalties or interest added to outstanding taxes should be cancelled.

Circumstances justified cancelling penalties and interests.

Such is the case, for instance, of a self-employed worker who had to face a series of major personal difficulties over the two years prior (his son and mother suffered prolonged illnesses; his mother's resulting in her death, etc.), which led him to a major nervous breakdown. Unable to meet his obligations, he filed his tax return a few months late.

As a result, the agency charged interests and a penalty. Medical evidence in hand, the citizen asked that the additional charges be removed. The Administration refused without further explanation and the taxpayer turned to the Protecteur du citoyen for help.

A taxpayer's serious illness or a death in his immediate family are nonetheless clearly identified in Revenu Québec's administrative policy as acceptable reasons, under certain conditions, to cancel penalties and interests. The agency's response was therefore unfounded.

Following the Protecteur du citoyen's intervention, Revenu Québec concurred that the taxpayer's situation met the criteria stated in its fiscal policy and accepted to cancel the penalties and interests charged for the year 2002.

An unreasonable decision.

Equally unfounded interests and penalties were charged to a citizen due to an alleged tardiness in filing his tax return.

The investigation revealed that the citizen had filed two income tax returns for the same fiscal year. The first one was filed in time with the payment enclosed. However, it

contained an error resulting in the citizen having overpaid by $600. An employee of the agency had contacted the citizen and proposed to send back the tax return, along with the check, explaining that, from an administrative point of view, it would be much simpler to submit a new tax return and issue a new check, than to ask Revenu Québec to reimburse the difference between the two amounts. The citizen complied, only to be charged with a penalty for filing his tax return after the deadline. Despite his efforts, the citizen could not convince the agency of the merits of his position.

The Protecteur du citoyen, on the other hand, was in total agreement with the citizen, who had lawfully fulfilled his obligations when filing the first tax return. He had then simply followed the suggestion of the Administration itself. The citizen should not have been charged penalties for a delay resulting from an administrative procedure proposed by the agency.

The agency finally agreed to cancel the interest and the penalties. The Protecteur du citoyen, however, has difficulty understanding why in this unequivocally clear-cut case the administration had first rejected the citizen's request, which was perfectly legitimate.

The claim was abusive.

In another example involving the liquidator of an estate, the Protecteur du citoyen found the agency's position clearly abusive. The liquidator had obtained a certificate of distribution stating that the deceased did not have any outstanding tax liability, thereby authorizing the distribution of the estate's assets.

Regardless, Revenu Québec later sent the citizen a letter claiming an amount in excess of $6000 for a debt incurred over ten years earlier by the deceased's old company. The citizen explained in vain that he should not be personally liable for this debt, since he had already received the authorization to distribute the estate's assets. The Agence disregarded his argument and advised him that failing to pay the claim, he would face recovery procedures.

After investigating the case, the Protecteur du citoyen concluded that the agency's request was completely unwarranted. The citizen has fulfilled his obligations in good faith, after having received authorization to proceed with the distribution of the estate's assets in accordance with current applicable laws. He should not be held liable for any wrongdoing. The Administration quickly concurred with the Protecteur du citoyen and the claim was withdrawn.

Information transmitted or requested: between too little and too much

Many well-founded complaints received during the year stem from problems with the quality of the information sent to, or asked from, taxpayers.

Closing the case file without proper analysis was unreasonable.

Such was the case of a recently widowed citizen who claimed a capital loss deduction on behalf of the estate. She was not sent any notice of assessment or advised of a motive for rejection from Revenu Québec. The Canada Revenue Agency, on the other hand, accepted the deduction. The citizen then asked Protecteur du citoyen to intervene.

The Protecteur du citoyen learned that the front-line worker in charge of the case had decided to close it a few months earlier, having deemed the documentation provided with the request to be inconclusive. The employee had not felt the need to refer the case to a superior, nor to ask for additional information from the taxpayer, nor to inform the citizen of the refusal and the reason for doing so. She justified her actions by arguing that a case ought not be left opened too long.

The Protecteur du citoyen believes that a case file should not be closed for purely administrative reasons, without having fully investigated the case and without informing the citizen involved. The Administration concurred. The case was reopened and a justified decision was rendered, which left room for future objection from the taxpayer.

The citizen should have been notified.

Another case to note down involves a citizen who, acting as an estate's liquidator, had filed an income tax return as required. During the following months, he repeatedly contacted the agency to inquire about the processing of the file only to be told every time that the case was still pending. After five months, he turned to the Protecteur du citoyen for help.

The Protecteur du citoyen then found that the citizen had sent in the wrong form and, as a result, the case file had not been forwarded to the body in charge of processing such files.

Following the Protecteur du citoyen's intervention, the correct form was sent to the liquidator. The fact remains that by neglecting to inform the citizen, the settlement of the estate was delayed by several months.

The Administration requests information it already has on file.

Conversely, sometimes unnecessarily requests are made.

Such was the case of a citizen whose case file had been pending for a long time because the Administration had requested bank statements indicating interests paid on a student loan over a four-year period. An investigation into the matter revealed that the documents were already on file at Revenu Québec. The employee had neglected to verify the file, and imposed unnecessary requirements on the citizen. Following the Protecteur du citoyen's intervention, the file was processed without further delay.

Procedural improvements

Every year, Revenu Québec receives around 3,000 requests from taxpayers for the issuance of new checks to replace ones that have been lost or stolen. In such cases, citizens should expect having to wait a few weeks before a new check is issued. Furthermore, no notice of assessment is sent along with the new check.

Following a complaint from a citizen in this predicament, the Protecteur du citoyen learned that the agency had improved their check replacement procedure so that a notice of assessment would now be enclosed with each new check issued.

■ Support payments collection

Incorrect and indecipherable statements: mission impossible?

For several years already, the Protecteur du citoyen has been pointing out the numerous difficulties experienced by many citizens, be they support payers or recipients of support, who are unable to make sense of the support statements prepared by the agency.

Unfortunately, the situation has not changed. Yet, in September of 2003, the authorities at the ministère du Revenu had informed the Protecteur du citoyen that an advisory committee had been created to devise solutions. A year later, in August of 2004, the Administration stated that the aforementioned committee would not begin its proceedings until May of 2005, despite the existence of an unacceptable situation.

An undecipherable mess. ▸ To reiterate the gravity of the situation, if there is still a need for it, the Protecteur du citoyen points to the case of a support payer who was imposed a claim that he considered unwarranted. Unable to decipher his statement, even after several appointments and exchanges with a representative from the agency, he turned to the Protecteur du citoyen for help.

Even the Protecteur du citoyen could hardly make heads or tails of it. ▸ After several hours spent analysing the statement, the Protecteur du citoyen concluded that the claim was well founded, but that the statement did not contain any of the answers to the citizen's questions. One needs only to mention that approximately 60 entries citing payments were received from the payer. However, the amounts shown did not correspond to the actual sums paid by the support payer since each payment had been divided to appear in two different sections of the statement. Moreover, 28 additional entries were attributable to data entry mistakes and their corrections.

What a waste of time and energy! ▸ The Administration does not seem to realize that on top of the serious drawbacks for citizens as a result of their actions, this present way of proceeding increases its own operating costs. What a waste of time and energy!

It should not be mission impossible! ▸ The Protecteur du citoyen points out that it has been notifying the Administration of this serious problem for several years already. To this day, no real improvements have been made to this situation. All the same, issuing statements that are easily understood should not be mission impossible!

Support payment collection: sparing no efforts

Year after year, the Protecteur du citoyen receives complaints concerning the lack of willingness to take the necessary measures when it comes to collecting outstanding support payments. In its 2002-2003 annual report, the Protecteur du citoyen had demonstrated this situation with a few examples. Other occurrences brought to its attention this year would indicate that the situation remains unchanged.

One simple action is sometimes sufficient to rectify the situation.

It is worth noting that not all cases are complicated or hard to resolve. In some occasions, a simple inquiry or remark from the Protecteur du citoyen was sufficient to improve a situation or resolve it once and for all.

For instance, in the case of a debtor who has been delinquent in his payments for over five months, the Protecteur du citoyen suggested that the citizen's bank account be seized. The creditor collected an amount of $4,000 immediately. In another case, it recommended to verify certain information with the debtor's last employer, after which the creditor was able to collect arrears equalling $850. Finally, there is the case of a debtor whom the Administration could not locate. After the Protecteur du citoyen called the Administration's attention to the fact that the debtor's address was located outside Québec, the case file was forwarded for processing to the local authorities in charge of such matters.

Case files such as these are not particularly challenging. The problem centres on the agents' overwhelming workload or their desire to act quickly.

Debtors try to escape their obligations.

There are, however, some situations that are more complicated, especially when debtors employ various strategies to escape their obligations. The Protecteur du citoyen has often pointed out the impaired effectiveness of the collection process in such circumstances. The agency has significant means at its disposal for collecting payments. It can garnish wages, employment insurance benefits, tax refunds, pension payments, etc. In some cases, it can seize up to 50% or even 100% of the funds, depending on the situation.

Sometimes stronger measures are necessary.

One has to admit, however, that there are important shortcomings in terms of the efforts made to collect monies owed by debtors acting in bad faith, a point brought up by the Protecteur du citoyen in its annual reports for 2001-2002 and 2002-2003. Once again this year, it has sent letters to the Administration concerning a certain amount of case files in which there were difficulties collecting pension payments totalling from $25,000 to $190,000. In each case, judgement had been rendered regarding the debtors' ability to fulfill their obligations. The Administration has acknowledged that these problems do exist. It plans on putting in place new mechanisms to improve its performance. The Protecteur du citoyen will wait to see the results.

These funds are crucial to creditors.

The Protecteur would like to stress that when it comes to support payments, one may tend to sometimes downplay the significance of the amounts. Whether small or large, these amounts are considered very important by their recipients, be they children or adults.

Debtors must also be treated with equity

While firm and swift action is necessary to ensure that recipients receive what is owed to them, it is nevertheless advisable to evaluate each case with equity when applying collection measures. For example, garnishing 50% of someone's salary or employment insurance benefits is not always appropriate. Likewise, collection measures such as seizures should always be reduced or cancelled when they are no longer necessary. Let

us not forget that in some cases, the debtor who is being seized is often left with barely more income than if he were receiving welfare benefits. The Protecteur du citoyen had to intervene once again this year to help resolve such cases.

It would have been advisable to proceed more quickly.

For example, a citizen was having 50% of his employment insurance seized for several weeks while the circumstances of his case no longer called for such a measure. His attempts to rectify the situation with Revenu Québec proved fruitless; the response was that he would eventually be reimbursed.

An investigation into the matter revealed that the Administration had neglected to transmit the necessary notice to the federal government. The situation was promptly rectified, but one could assume that without the intervention of the Protecteur du citoyen, it would have lasted several weeks longer.

Justice for all.

The fundamental mandate of Revenu Québec regarding such matters is to carry out all legal and legitimate means in order to preserve the rights of support creditors. It must not, however, disregard the needs of debtors. It is not only a matter of balance, but also a basic need for justice.

Clearer information for debtors

In response to several complaints brought to its attention, the Protecteur du citoyen suggested that the Administration modify the contents of a letter sent to support payers concerning the potential seizure of their tax refunds.

The wording of a form letter could be confusing.

Should there be an arrangement concerning the reimbursement of outstanding support payments, the agency's general policy stipulates that tax refunds will still be seized in order to accelerate the collection of all amounts owed. The form letter confirming an arrangement, however, could have led the reader to believe that a seizure would not be applied to tax refunds if the debtor complied with the agreement. The wording was modified to the Protecteur du citoyen's satisfaction.

A worrisome attitude

The Protector contacted the Minister of Revenue regarding a policy statement of the Administration, which she deemed not only unacceptable, but that may also have negative repercussions in the future.

A claim sent belatedly...

A court decision was rendered with the effect of cancelling a citizen's support payments. Revenu Québec reimbursed him the amount overpaid. Surprised by the relative size of the reimbursement, of about $500, the citizen checked with Revenu Québec. They confirmed that he was indeed entitled to the amount, and that he would probably receive an additional sum shortly thereafter.

Over 42 months later, he received a claim for a payment of $700. He turned to the Protecteur du citoyen for help.

... in response to a debt to another ministère.

The investigation of Revenu Québec's actions revealed that an amount was clearly owed to the Ministère de l'Emploi, de la Solidarité sociale et de la Famille (MESSF), which had advanced said amount to the creditor. However, the MESSF had waited before notifying Revenu Québec of the debt, which in turn procrastinated for almost a year.

The claim should have been withdrawn.

The Protecteur du citoyen recommended that the claim be cancelled considering that the citizen, who had proceeded with the utmost precaution, had been wrongly advised in the first place, the extended period before the claim was issued and considering his personal situation, earning a small wage and supporting a family.

The Administration refuses to budge.

Despite repeated actions by the Protecteur du citoyen at different decisional levels, the Administration persisted in its refusal. It claimed that regarding support payments, it only plays an intermediary role and therefore could not cancel a debt over which it had no authority.

The Protecteur du citoyen did not accept this argument by which the agency refused to accept the consequences of its actions. Such a perspective is particularly worrisome for the future because the government plans to regroup the agencies collecting various debts due to the State. In all likelihood, this mandate will be conferred upon Revenu Québec. In such a scenario, will a citizen who is the victim of an error or outright negligence always be in the wrong when facing a collector who reneges all responsibility under the pretext that the collection is conducted for a third party? Such an approach cannot be defended.

At the time of writing this document, the Protector was informed by the Revenue deputy minister that the issue was resolved to the satisfaction of all parties.

The claim imposed on the support payer was finally cancelled and transferred to the creditor who had received the sum as support payment, without ever having declared it to the MESSF or Revenu Québec. However, it does not change the fact that the claim of nearly $700 imposed on the support payer was unjustified.

It was only after several requests were forwarded to both the MESSF and Revenu Québec as well as a formal recommendation addressed to the ministre du Revenu that such a resolution was reached, albeit belatedly. One could wonder how a citizen without representation could have successfully asserted his or her rights.

3.1.7 The ministère de la Sécurité publique

■ Correctional services

The Protecteur du citoyen again rings the alarm

Visits to detention centres. ▸ Over the course of the last year, the Protecteur du citoyen toured all of the 18 detention centres in Quebec.

These visits provided opportunities to meet with administrators, employees and inmates, better understand their concerns and the problems they face and discuss general issues, as well as specific cases. These visits also enabled the Protecteur du citoyen to inspect the physical state of each establishment's facilities. Finally, the visits gave the Protecteur du citoyen the opportunity to raise awareness of its mission and work methods, which fosters a better understanding of its role and promotes increased collaboration.

The Protecteur du citoyen intends to report on the major issues raised during these meetings; several of which had already been brought to its attention and been subject to recommendations in its previous reports.

Shortcomings in training. ▸ Personnel at correctional facilities mentioned being especially concerned about the lack of resources dedicated to training employees, which should be a priority. Sound knowledge regarding the charters of rights and freedoms, the law, regulations and directions from the minister constitutes a key element of these employees' qualifications. They are critical in order to fulfil the correctional services' mission; otherwise, the personnel in charge of the efficient operation of disciplinary committees, processing complaints and claims, or granting leaves of absence is left feeling unprepared when faced with complex situations, which leads to procedural or interpretive errors and in turn, to the intervention of the Protecteur du citoyen.

Endless overpopulation and its dangerous consequences

Triple occupation. ▸ The Protecteur du citoyen was able to note that the situation has not improved in this regard. Chronic overpopulation still exists in several establishments. At the Amos detention centre, cells intended for two inmates were occupied by three people, with the third sleeping on the floor on a makeshift mattress. In Sorel, some inmates had to spend the night on makeshift mattresses in a small room next to the reception area.

Constant transfers. ▸ Even though the Protecteur is a little weary of doing so, since there is no solution to the problem on the horizon, it still believes that it has the duty to yet again bring attention to the very serious consequences of this phenomenon. Overpopulation leads to repeated transfers between establishments. These transfers, in turn, have major consequences on inmates: loss of personal effects, delays in the transmission of medical files and cancellations of medical appointments, delays in the processing of temporary absence requests, distancing from loved ones, etc. Under these circumstances, is it even necessary to mention the frustration and helplessness felt by people living these situations and the aggressive behaviour that can result from it?

For example, the Protecteur du citoyen was called to intervene in the case of an inmate who was transferred from Trois-Rivières to Montréal due to the facility's overpopulation. His wife was suffering from depression since his arrest and had been hospitalized for a three-week period. Still shaken when she left the hospital, she needed to speak frequently to her husband, thereby accumulating significant telephone charges, considering the couple's financial means. Moreover, the inmate's parents could no longer drive their car due to their advanced age; therefore, they could not visit their son nor bring their daughter-in-law to the centre. For humanitarian reasons, the Protecteur du citoyen arranged the inmate's return to the Trois-Rivières detention centre.

A weakened inmate.

All these negative impacts resulting from overpopulation, coupled with problems in terms of health care access and patient follow-ups, which will be discussed subsequently, ultimately result in seriously compromising access to the rehabilitation programs available to inmates and even negating their positive effect. The Protecteur du citoyen remarks that rehabilitation is one of the fundamental missions of detention centres. The goal is the inmate's successful social reintegration, which, it must be emphasized, also benefits public security as much as the offenders themselves.

Rehabilitation programs are compromised.

Health care accessibility, organization and follow-up

The health care services provided are the most common cause of complaints from inmates. Among the problems raised are the lack of access to health professionals, delays if not the outright refusal in providing prescribed medication, mistakes made during drug distribution, and the delay in transmission of medical files during inmate transfers.

Health care services: the main topic of complaints.

For example, there is the case of a citizen who has been receiving methadone for two years. When incarcerated, he was deprived of this medical treatment. After two days without treatment, he suffered intense pain and had to be brought to the hospital. He was nevertheless told that he had to wait before getting the required treatment.

Intolerable wait.

Called upon to intervene, the Protecteur du citoyen was informed that the attending physician, the only specialist in the field in the region, had refused to prescribe a treatment that he could not oversee.

In a broader perspective, the Protecteur du citoyen, being aware of other similar complaints, received confirmation from the authorities at one centre that the implementation of a methadone treatment program was experiencing some difficulties and that a coordination problem existed. The Protecteur du citoyen will closely follow the situation.

Coordination problems in methadone treatment.

Even more difficult for inmates suffering from mental illness.

All these problems are experienced much more acutely when they affect people suffering from mental illnesses, some of which are quite serious, such as schizophrenia, major depression, or bipolar problems. In a special report made public in 1999, the Protecteur du citoyen estimated that 30% of people held in detention centres in Quebec suffered from mental disorders. Based on the number of requests for interventions received over the last three years, there is no reason to believe that this number has decreased; in fact, the opposite may be closer to the truth. Increasing numbers of people are vulnerable because of psychological problems combined with physical problems and alcohol or drug abuse. In short, the Protecteur du citoyen remarked that this clientele has become a greater burden, an opinion confirmed by correctional authorities. According to representatives from the Ministère, the inmate population suffering from mental disorders or who have a history of mental health problems has today reached about 40%.

The shortcomings in the accessibility, organization or continuity of health services accentuate the distress felt by the people concerned.

A treatment was modified despite a court order.

For example, an incarcerated citizen had his medication decreased by nursing staff. The citizen, however, suffered from an illness so serious that a Superior Court judge had ordered that medical treatment must be adhered to according to the doctor's prescription. The investigation revealed an error in the administration of the drug and the situation was corrected.

An inmate had to obtain medication by his own means.

Another prisoner suffered from a physical health problem coupled with a psychological disorder and therefore needed constant medication. Medical prescriptions in hand at the outset of his detention, he immediately informed the relevant authorities of his fragile health. He was urged to contact different pharmacists himself, which forced him to pay telephone charges that he could not afford. The citizen also had to wait three days before having access to the centre's nursing personnel and another four days before getting his medication.

When informed of the situation, the Protecteur du citoyen pointed out to the centre that this way of doing things was unacceptable, went against established practices and interrupted the continuity of health care to which the citizen had a right.

Even more transfers for this clientele?

Upon studying the interventions related to individuals claiming to suffer from mental problems, the Protecteur du citoyen was struck by the number of transfers that affect this clientele. Without being able to provide accurate figures, the Protecteur du citoyen believes that transfers may be proportionally higher for this group than other inmates. In addition, the centres' authorities often noted fatigue in their personnel resulting from difficulties in dealing with these individuals, who create problems more often than other inmates because they understand less clearly what is expected of them, have difficulty respecting the conditions that are imposed upon them, because their judgement is altered and their fragile mental state makes them impulsive.

For example, the Protecteur du citoyen was informed of the case of a citizen suffering a major depression and having suicidal thoughts. He also showed signs of behavioural problems. In a single year, he was transferred to five different centres. Each time, his medical treatment was modified. His level of anxiety increased, leading to various physical problems and increasing the risk of a suicide attempt. The Protecteur du citoyen ensured that special attention was given to this inmate, who was extremely vulnerable.

Five transfers in one year.

It is obvious to the Protecteur du citoyen that repeatedly transferring physically or mentally ill individuals does not improve their health and can only aggravate problems. It can also undermine the benefits of a suicide prevention policy that has incidentally become a priority in correctional facilities over the last three years and has resulted in significant improvements with respect to the measures taken.

These transfers aggravate the numerous existing problems.

What emerges from meetings at detention centres is that all the consequences related to the overpopulation problem are exacerbated by the lack of health service resources, particularly mental health services, where the situation often becomes critical. Several centres deplore not having access to the necessary medical or nursing personnel. There is no coordinated network of specialized services focused on the needs of the clientele. In several regions, access to community resources is very limited, sometimes nonexistent. Correctional services have stated that they are increasingly at a loss facing the extent of this problem. Another aggravating factor is the precarious budgetary situation. Actually, each detention centre must assume health costs, including medication. The increase in health care needs has led to such a high increase in costs that authorities at the Ministère can no longer absorb them.

Under these circumstances, the respective roles of the ministère de la Sécurité publique and the ministère de la Santé et des Services sociaux, which also has a significant responsibility in the matter, must be re-evaluated as quickly as possible.

Agreements need to be reviewed.

The Protecteur du citoyen noted that the exchanges it had with the detention centres were fruitful and that solid collaboration efforts were being put forth. Goodwill and good intentions are evident.

In general, the situation continues to degenerate, especially with respect to health care. The Protecteur du citoyen believes that, regarding all the factors that have been mentioned, the mission of the correctional services may be compromised in the short or medium term.

The correctional services' mission may be compromised.

The Protecteur du citoyen can only re-iterate its wishes, as in previous reports, and call for the implementation of the new law on correctional services, which should of course be accompanied with the necessary funding.

The new law should be enforced.

3.2 AGENCIES

3.2.1 The Commission de la santé et de la sécurité du travail

■ Workers' compensation

An unrectified file

The CSST refused to pay an IRI.

While investigating another aspect of a worker's case at his request, the Protecteur du citoyen noted that the Commission de la santé et de la sécurité du travail (CSST) had refused to pay him an income replacement indemnity (IRI) because he was already retired at the time of the injury.

The practice did not comply with case law.

In previous reports, the Protecteur du citoyen had already stressed that this practice did not comply with case law established by the administrative tribunal with jurisdiction in the matter, i.e., the Commission des lésions professionnelles (CLP). The Protecteur du citoyen then asked the CSST to modify its policy in this regard.

The citizen received over $38,000.

The IRI is not intended to compensate for a loss of earnings, but a loss of earning ability. The Act respecting industrial accidents and occupational diseases is aimed specifically at compensating for this loss of ability.

Following the Protecteur du citoyen's intervention, the CSST acknowledged the worker's right to an IRI and paid him over $38,000 in retroactive compensation.

The need for flexibility and common sense

Refusing to provide compensation was illegal.

The Protecteur du citoyen has also mentioned before that the CSST has too often been "overly restrictive in its application of the law, regulations, or even its own policies."[3] The following examples show that the CSST must work harder to be more flexible or simply show common sense in its assessment of certain situations.

After suffering a work accident, a citizen is no longer able to do his job. His employer cannot assign him less demanding work. However, the worker manages to find a suitable job with another employer.

Notified of the situation, the CSST stops paying the IRI. However, a short time later the man loses his new job. He asks that the indemnity be reinstated, but the CSST refuses. The man files a complaint with the Protecteur du citoyen.

3. LE PROTECTEUR DU CITOYEN, 2003-2004 *Annual Report: Building on Common Sense*, Québec, June 2004, p. 39.

The Protecteur du citoyen determined that the CSST's decision illegally restricted the worker's right to compensation. The act expressly states that workers are entitled to the IRI as long as they are unable to carry on the employment they held before the injury. Furthermore, the worker is presumed to be unable to work until the injury has consolidated, i.e., it has permanently stabilized without the possibility of improvement or aggravation. In this case, the man's new job could not be compared to his former job since certain duties were different. Admittedly, compensation could have been reduced or even cancelled while the man held this new job. However, the CSST should not have refused to reinstate it after he was laid off.

Not only was the decision illegally restrictive, it was also unreasonable. It is important to understand that the man was not required to take this job. He could have stayed home and received the IRI while awaiting a decision regarding the consolidation of his injury. Instead, he chose to remain active and receive a salary rather than compensation. It made no sense to later penalize him for this choice.

It was also unreasonable.

After the Protecteur du citoyen intervened, the citizen received an indemnity of over $8,500.

An overly broad interpretation... to the citizen's detriment.

A citizen suffers an occupational injury. After rehabilitation, he returns to the same employer and takes a job better suited to his condition.

Later, the employer notifies him he has been assigned to another job unsuited to his functional limitations and assures him a colleague will provide the help he needs.

The next day, the colleague is absent from work. The man must do his job alone. Late that morning, he notifies the foreman of the situation and his increasing difficulty in doing his job. The foreman tells him to continue working. He acquiesces, and the inevitable happenned: his injury became aggravated and he has to be hospitalized. The CSST turns down the man's claim and he calls on the Protecteur du citoyen.

The CSST explains that it deemed the aggravation of the worker's injury his own fault because he should have refused to do work that exceeded his functional limitations. The injury was aggravated as a result of "the gross and willful negligence of the worker." In accordance with this provision of the act, the CSST is not required to recognize an occupational injury in such cases.

The Protecteur du citoyen could not agree with the CSST. First, the occupational therapist's report clearly indicated that the worker should not have been assigned this job. In addition, the employer knew that the promised assistance was not available and should therefore have assigned him other duties. Last, the man had reported his difficulty in doing the work and continued only at the foreman's express request.

The worker was not guilty of "gross and willful negligence."

For the Protecteur du citoyen, it was obvious the worker was not guilty of "gross and willful negligence." This time, the CSST's interpretation was not overly restrictive but rather overly broad, to the citizen's detriment.

The CSST finally agreed, and approved the claim.

Ambiguity in the payment notice.

The Protecteur du citoyen received complaints from certain workers regarding the CSST's refusal to correct its calculations of the salary base used to establish their indemnities.

When asked about this matter, the CSST indicated that the indemnities it pays are accompanied by a payment notice that, it said, constitutes a decision that must be disputed by the specified deadline.

The Protecteur du citoyen noted that the back of the notice included the following statement: "Please note that this notice is for information purposes only and does not constitute a decision by the CSST." For the Protecteur du citoyen, it was clear that a "payment notice" could not be considered a "substantiated opinion in writing," as specified by the act.

The quality of the information provided has improved.

The CSST concurred with the Protecteur du citoyen and agreed to modify the payment notice to eliminate ambiguity. Now this notice states that the basis for calculating the worker's indemnity may be modified in the event of errors or omissions. The notice formally invites workers to send the CSST information regarding bonuses, gratuities, commissions, or any other income specified by the act that may alter the calculation.

Workers are also informed of their right to appeal if they believe the salary base is incorrect.

The Protecteur du citoyen expressed satisfaction with the CSST's efforts to ensure transparency.

■ Crime victims compensation

Fast, but not too fast

Fast should not mean rushed.

Complaints submitted to the Protecteur du citoyen over the past year have revealed gaps in the information provided to citizens. Information is not always complete, and is sometimes incorrect. The Protecteur du citoyen has also identified a tendency to rush through cases on occasion. This can cause CSST staff to make mistakes or overlook important details.

A requirement that doesn't exist.

For example, a mother is denied reimbursement for expenses incurred for her child, a crime victim. She is told to open a bank account in the child's name. When she asks why, she is simply referred to the Public Curator.

The investigation showed that this requirement was unjustified. The woman received the reimbursement to which she was entitled.

Lack of awareness of policy in effect.

The CSST refused to count a bonus a citizen was entitled to in the salary base used to determine his indemnity. This refusal violated the CSST's own policy. the Protecteur du citoyen helped rectify the situation and the man received a higher indemnity.

A single question was all it took.

Another person was told not to bother filing a claim as an arson victim. The matter was referred to the Protecteur du citoyen, which asked whether the person was inside the building during the fire. The answer was yes. Because of this sole fact, the victim could file a claim, which would be judged on its merits. The Protecteur du citoyen reminded the CSST of the importance of providing citizens with accurate, complete information.

A simple rule forgotten.

Last, the Protecteur du citoyen handled a complaint from a citizen, whose indemnity had been interrupted following a psychologist's report. The Protecteur notified the CSST that in accordance with its own directives, it could not terminate the indemnity until it had received a report from the attending physician. The indemnity was reinstated while awaiting the report in question.

Follow-up?

Recommendations made three years ago.

During fiscal year 2001–2002, the Protector released a special report on crime victim compensation and the state's responsibility entitled Le contrecoup du crime à assumer par l'État (The consequences of crime to be compenseted by the State) [Liberal translation]. In it, she made eight recommendations and suggested overhauling the Crime Victims Compensation Plan.[4]

A positive response the following year.

In 2002–2003, she reported on the minister of justice's positive response to this report, which was followed by another report released in 2002 by an advisory committee created by the minister to review the Crime Victim Compensation Plan. This report incorporated the Protector's recommendations.[5]

Now what?

The Protector has received no news since that time. She therefore reiterates the importance of following up on this important matter.

4. LE PROTECTEUR DU CITOYEN, 2001-2002 *Annual Report: Above and Beyond the Law*, Québec, November 2002, pp. 89–91.

5. LE PROTECTEUR DU CITOYEN, 2002-2003 *Annual Report: Going the Extra Mile*, Québec, November 2003, p. 121.

3.2.2 The Curateur public

A reform to be continued

Work still remains to be done.

The Protecteur du citoyen outlined in last year's annual report actions taken by the Curateur public with respect to the recommendations described in various special reports. While noting that several improvements have been made, the Protecteur du citoyen observes that much remains to be accomplished. The ongoing reform conducted by the Curateur public has again continued throughout last year. The Protecteur du citoyen, nevertheless, would like to point out certain areas where vigilance is still necessary.

Guidelines to be completed.

The Curateur public accepted the recommendation of the Protecteur du citoyen regarding the use of its power as investigation commissioner. It implemented rules of procedure when conducting investigations on financial abuse that individuals it represents may have suffered. The Protecteur du citoyen believes that similar rules should also be formulated for cases that are brought to its attention regarding physical or psychological abuse, which may jeopardize the health, safety, dignity or integrity of the people it represents.

Knowing the needs of its clientele.

In order to effectively fulfill its mission of representing incapable people, the Curateur public must thoroughly understand its clientele and their needs. The government agency has made significant efforts in this regard. However, individuals represented by the Curateur public are still not all visited at least once per year. Moreover, the Curateur does not always receive the evaluation and intervention plan developed for each individual living in healthcare and social services institutions. These aspects are, however, essential to understanding the needs of incapable people.

While the Curateur public must be able to rely on the full and complete collaboration of these institutions, it must also have the necessary workforce to fulfill its mission to protect. This workforce, which is already insufficient, risks becoming even more so because of its increasing clientele.

Consenting to treatment... continue to require it.

Despite the large number of people represented and the range of care that may be offered, the Protecteur du citoyen believes that the Curateur public must always continue to require health professionals to request the Curateur's consent in all cases where circumstances deem it necessary. The efforts made to raise awareness of this network workers must be continued.

A tremendous tool that should not have been abandoned.

In this regard, the Protecteur du citoyen deplores that the Curateur public put an end to its evaluation program of the services provided and the quality of life of its charges. The systematic visits into living environments by the Curateur public's dedicated experts represented a tremendous tool to understand not only the needs of the people represented and how these needs are met, but also any shortcomings in requesting the necessary consent from the Curateur public regarding the care given to its wards.

Adopt a temporary measure.

The Protecteur du citoyen had previously recommended that the Curateur public make the necessary provisions to respond effectively to people requesting information about the way their property is being managed. To do so, the Curateur has agreed to implement a new computer system. While waiting for the project to be completed, the Protecteur du citoyen repeated its request to supply personnel with the template of a simplified monthly statement.

Responding to a recommendation made several times by the Protecteur du citoyen, the Curateur public produced for healthcare and social service institutions a guide detailing its objectives in matters concerning the management of the monthly allowances of people living in their facilities who are represented by the Curateur. A follow-up process is currently being developed as to how this guide is implemented by the staff of these institutions. The Protecteur du citoyen will continue to monitor this issue.

Ensure follow-up.

Protection of minors' property: an element not to be neglected

Over the course of the year, the Protecteur du citoyen received complaints from individuals who, upon reaching legal age, had found that their property acquired from an inheritance or other sources was impoverished. These citizens criticized the Curateur public for not exercising, as required by law, appropriate monitoring of the management provided by the guardians, who are, in most cases, their parents.

Negligent monitoring of the management provided by guardians.

The Curateur public must monitor such management when minors possess sums in excess of $25,000. Guardians must make sound financial investments in order to protect an inheritance that will be remitted to the child upon reaching legal age.

They must provide for the child's basic needs, but may not use the child's funds for their own use or combine it with their own assets.

The following case demonstrates that the Curateur public is sometimes negligent in this monitoring.

A mother obtained the Curateur public's authorization to use the sums disbursed to her two children by the Société de l'assurance automobile du Québec to purchase a house. Subsequently, the mother failed to pay the transfer duties and insurance premiums, nor did she perform proper maintenance on the house, nor did pay rent, which had to be deposited into the children's account. She also neglected to pay the property taxes and thus received warnings from the municipality that it would seize the property. She finally declared bankruptcy and left the house.

The guardian failed in all her obligations...

The investigation showed that through the entire two-year period, the Curateur public, even though aware of these violations, did not take any action to prevent the situation from deteriorating further.

...without intervention by the Curateur public.

The Curateur finally submitted a request to the court to replace the guardian and the agency was designated to represent the children.

The Curateur public itself is guilty of negligent management.

Contrary to what one might expect, the Curateur public paid little attention to the house. Among other things, the Curateur public did not follow up on warnings from the tenant who pointed out that water leaks were damaging the structure.

As a result, the children's funds are diminished.

Finally, the agency decided to sell the property in order to recuperate the amount owed to the children. Under the circumstances, the selling price of the house was evidently much lower than its purchase price and the children were not able to recoup their investment.

Financial compensation is disbursed.

The Protecteur du citoyen concluded that, in this case, the Curateur public failed not only in monitoring the guardian, but also in its representation of the children. It caused damages that had to be repaired. The agency disbursed a financial compensation of $4,500 to each child.

Money reserved for happiness

The State disbursed financial compensation to one of "Duplessis' orphans".

A citizen received an amount under the "Programme national de reconciliation" created by the Québec government to compensate the wrongs caused to people designated as "orphelins et orphelines de Duplessis" ("Duplessis' orphans"). Because they had no family, these people were placed, decades ago, in psychiatric institutions even though they did not suffer from mental illness.

The Curateur public used a part of the funds to repay a debt.

This citizen, like many other Duplessis' orphans, is represented by the Curateur public. She wanted to use the compensation money for her personal use. She remarked that the sum awarded to her from the program was substantially reduced. She complained to the Protecteur du citoyen.

The investigation revealed that the Curateur public had used a portion of the funds to pay a debt that the citizen had incurred several years ago.

The compensation could not be used for such ends.

The State's compensation program was based on the following principle: grant individual aid to improve the lives of these people by satisfying an important need or allowing them to achieve a dream; a principle for which the Curateur public had in fact adopted an administrative guideline.

The Curateur public reimbursed the citizen.

According to the Protecteur du citoyen, under these circumstances, using the money in part or in whole for another purpose did not comply with the program's objectives. The Curateur public concurred and refunded the citizen accordingly.

The Régie de l'assurance maladie du Québec

3.2.3

Prescription drug insurance information: one should not stop midway

Citizens know very little about the drug insurance plan...

Intervention requests received by the Protecteur du citoyen since the implementation of the Public Prescription Drug Insurance Plan led to the observation that a large portion of the population know very little about the nature and provisions of this program as well as their obligations.

...as already noted by the Protecteur du citoyen.

In its last two Annual Reports, the Protecteur du citoyen expressed the need to conduct a massive information campaign to remedy this shortcoming. It reminded the Régie de l'assurance maladie du Québec that such a campaign has not been conducted since 1997 and that a new one was entirely justified, as quickly as possible.

The duty to inform.

Aware that this measure has yet to be implemented, the Protecteur du citoyen intervened again with the Régie over the last year to reiterate the urgency of adequately informing its clientele, who would then be better able to understand their rights, duties and responsibilities. It pointed out that the obligation to inform its clientele was included in the Health Insurance Act.

Measures were taken...

The Régie clearly acknowledged its duty in the matter. It informed the Protecteur du citoyen of the adoption of an action plan aimed at specific clienteles and using various methods: awareness-raising campaign, fliers, inserts in a specialized magazine, special section dedicated to drug insurance on its Web site, information meetings, etc.

...but actions on a larger scale are required...

The Protecteur du citoyen agrees wholeheartedly with these methods; however, it remains convinced of the necessity for large-scale and repeated measures. Eligibility criteria for the public plan should be emphasized, with particular attention given to citizens' obligation to join a group drug insurance plan and register their spouse and dependents when such a plan is available either through their employer or a professional association.

...because the consequences of ignorance can be disastrous.

The Protecteur du citoyen has had many opportunities to note the unfortunate, if not disastrous, consequences that may befall citizens who ignore this obligation. Citizens eligible for a group insurance plan may have their registration with the public drug plan managed by the Régie cancelled, even retroactively. Such citizens would then have needlessly paid for coverage to which they had no right, without being protected by group insurance in which they should have participated. Worse, they are required to reimburse amounts received from the Régie during the period that they were illegally registered. These claims may sometimes reach thousands of dollars.

Shortcomings the information given must be kept in mind...

The Protecteur du citoyen is therefore very concerned by the issue of the Régie recovering funds from citizens whose debts were incurred in good faith as a result of insufficient information. It is convinced that this factor must be kept in mind when recovering sums received inappropriately. It asked the Régie several questions on this matter and clarification must be obtained concerning certain items. If applicable, it will formulate recommendations as it deems appropriate.

...in regards to this very complicated plan.

The Protecteur du citoyen yet again reminds the Administration of the high complexity of the plan. When changes occur in a citizen's family or employment situation, the citizen may be required to frequently shift between the Régie's public plan and a private group plan. The Administration must therefore make every effort to keep citizens from suffering greatly as a result of inadequate information being given. The Protecteur du citoyen will continue to follow closely the Régie's actions in this regard.

It should have gone "Above and beyond the law"

Refusal to issue a medical insurance card.

A citizen whose health required immediate medical attention, tried in vain to renew her medical insurance card. After four months, she called upon the Protecteur du citoyen for assistance.

The letter could not take the place of the lease.

The investigation revealed that the citizen had not renewed her card two years prior, upon its expiry. In such a case, the Régie assumes that the individual had left the province. When there is a request for renewal, proof of residency in Québec is then required. In the case of a tenant, regulations demand that the citizen provide a copy of the lease. However, the citizen produced a letter indicating an increase in rent, which was refused by the Régie even though the document bore the citizen's address.

Other elements could have proven her residency.

The citizen stated that she had misplaced the original lease for her accommodations, where she had been living for 14 years. Also, obtaining a copy of the lease from the building's corporate landowner implied a long and tedious process. Furthermore, she received social assistance benefits, which are given only to Québec residents.

The card was issued.

After some consideration, the Protecteur du citoyen concluded that the citizen had provided sufficient proof of her status as a resident of Québec. The Administration concurred and the card was issued.

Sometimes going "Above and beyond the law" is necessary.

The Régie should have made the necessary verifications and gone "Above and beyond the law", as indicated the title of the Protecteur du citoyen's 2001-2002 Annual Report.

The document was in the file

A citizen of foreign origin had been living in Québec since childhood. He became a Canadian citizen in 1972. In 2002, he left Québec for several months to live in another province. Upon his return, he requested a medical insurance card. Having misplaced his citizenship card and his birth certificate, he enclosed a copy of his commemoration certificate of citizenship with his application. The Régie refused to issue the card based on this document.

Informed of the problem by the Protecteur du citoyen, the Régie explained that it could not consider it an official document because it was meant as a souvenir of accession to citizenship and did not indicate the recipient's gender, information which is essential and mandatory. The Régie did however verify the citizen's file and found a copy of the citizen's birth certificate, which had been supplied with a previous application. The card was issued.

◀ *A copy of the birth certificate was already in the file.*

The Protecteur du citoyen mentioned on several occasions the importance of verifying all the elements in a file in order to avoid imposing onto citizens unnecessary steps to gather information that the Administration already possesses.

◀ *Why demand a document already in its possession?*

3.2.4 The Régie des rentes du Québec

Debt cancellation was necessary

A citizen has been receiving disability benefits from the Canada Pension Plan (CPP). The amount is small, so since 1997 she has also been receiving an additional amount accorded to her as social aid by the Ministère de l'Emploi, de la Solidarité sociale et de la Famille (MESSF).

An application was made on the advice of MESSF.

In March 2003, on the advice of an MESSF employee, the woman applied for disability benefits from the Régie des rentes du Québec (RRQ). The benefits were granted.

The citizen was not eligible for benefits; reimbursement requested.

Some 18 months later, a CPP employee informed the RRQ that it was already paying benefits to this citizen on behalf of the federal government. The RRQ subsequently demanded repayment of the $13,000 to which she was not entitled. The woman brought her case to the Protecteur du citoyen.

The woman was not at all responsible for the error.

The investigation confirmed that the citizen had informed the MESSF in 1997 that she was receiving benefits from the CPP. The MESSF should have known that the woman was not entitled to receive disability benefits from the RRQ since the calculation of benefits given by the CPP takes into account the contributions made to both regimes. In addition, it was also confirmed that she had been encouraged by an MESSF employee to submit an application at the RRQ.

The RRQ had all the information it needed to verify the application and realize that the woman was not eligible for disability benefits from Québec, and thus inform her of this.

The claim is dropped.

The Protecteur du citoyen came to the conclusion that errors or omissions were made by both the MESSF and the RRQ. The citizen acted entirely in good faith. She could not have known that she was not entitled to benefits from the RRQ. In addition, she was in a precarious financial situation, and requiring her to reimburse the RRQ benefits could have had serious consequences for her. Under the circumstances, there was cause to cancel the debt. The RRQ abided by the Protecteur du citoyen's opinion and the debt was cancelled. The Protecteur du citoyen was pleased that the RRQ recognized its error and especially that it accepted the consequences, which, unfortunately, is not always the case everywhere.

Improvements to be made to the application form.

During its investigation, the Protecteur du citoyen also noted that the questionnaire included as part of the application for disability benefits was somewhat unclear for the CPP recipients. Improvements will be made when the form is updated.

Work needs to be done first

A citizen applies for a retirement pension. She receives a letter from the RRQ informing her that the amount she will be allowed is less than what it could have been because she did not receive a family allowance over some 16 months from 1972 to 1974. However, if she can prove that she was eligible for an allowance at the time, it will be possible to readjust the pension. The woman brought her case to the Protecteur du citoyen.

Proof is required to calculate the pension.

Simply stated, retirement pensions are calculated based on the period of time during which an individual actually made contributions compared to the period of time during which the individual could have done so, which is called the "contributory period." The greater the ratio, the greater the pension.

However, legislators did not want to penalize women who stayed home to take care of their children. Thus, the period during which they receive family allowances is subtracted from the contributory period. The applicant must, however, show proof that she did indeed receive a family allowance during this period.

After the Protecteur du citoyen got involved, the RRQ found evidence in its computer system that she received a family allowance during the period in question. The woman's pension was recalculated.

The investigation showed that changes to a computer system could have caused certain years to be "lost"-years when family allowances were paid—and no longer appear in the new system.

Data lost in the computer system.

The Protecteur du citoyen thus encouraged the RRQ to invite individuals affected by this to contact it so that it could search its other systems to validate the period during which family allowances were paid. This seemed preferable to asking citizens to come up with proof on their own. In addition, the Protecteur du citoyen suggested that the RRQ make the necessary verifications first, before contacting those affected, and notify all those for whom the search came up empty of what they should do to show that they did receive family allowances during a given period.

The RRQ must set the record straight with other citizens as well.

The agency responded positively to the Protecteur du citoyen's suggestions. The procedure was adjusted so that a systematic verification would be done for all files that showed that no family allowances were received between April 1967 and December 1973. Lastly, the letters sent to those from whom the search produced no results were changed to make it clear that the RRQ was requesting information, not handing down a decision.

New procedures adopted.

The Protecteur du citoyen was satisfied with the measures taken.

3.2.5 The Société de l'assurance automobile du Québec

■ Compensation for traffic accident victims

Waiting periods: improvements are on the way

Unduly long waits. ▸ In its last annual report, the Protecteur du citoyen drew attention to delays in processing claim review applications. Average waits were nine months, which the Protecteur du citoyen felt was clearly unreasonable.

An action plan is developed and implemented. ▸ Over the past year, the Protecteur du citoyen noted that the Société de l'assurance automobile du Québec (SAAQ) has taken a number of steps to reduce waiting times.

An action plan was implemented to revamp procedures for processing review applications. Certain types of disputed claims were prioritized, and the duties of review staff were reevaluated. Reviewers also received special training on how to deal with certain files. With regard to Direction de l'indemnisation (compensation branch), the Protecteur du citoyen has frequently denounced the SAAQ Medical Bureau for multi-month waits in releasing medical opinions, which has serious consequences on claims processing. To this end, the compensation branch has also drawn up an action plan, the results of which remain to be measured.

Efforts must be maintained and stepped up. ▸ The SAAQ administrative waiting periods are still long, and the Protecteur du citoyen continues to receive complaints to this effect. Efforts made to date need to be maintained and stepped up to ensure that accident victims are restored to the top of the SAAQ priority list.

Citizens caught in the middle again

The SAAQ and the CSST pass the buck. ▸ For a number of years, the Protecteur du citoyen has been receiving complaints from road accident victims who were already receiving income replacement indemnities (IRI) from the Commission de la santé et de la sécurité au travail (CSST). They denounce the fact that the two agencies mutually hold each other responsible for compensating the deterioration in the claimants' medical conditions.

But they should work together... ▸ The Protecteur du citoyen has found that these situations generally arise when the two agencies analyze accident victim files separately. Both the Act respecting Industrial accidents and occupational diseases and the Automobile Insurance Act stipulate that in cases like these, the two agencies must agree on a claim processing method in order to reach a joint decision that distinguishes between the damages attributable to the employment injury and those caused by the traffic accident. This way, they can determine the indemnity payable by each agency. Too often, lack of cooperation leads to situations where, contrary to the law, decisions are not jointly reached.

Claimants may find their applications rejected by both agencies, with each basing its decision on its own motivations. Even worse, rejections may be upheld by each of the administrative tribunals where claimants can file an appeal, i.e., the Tribunal administratif du Québec (TAQ) for the SAAQ and the Commission des lésions professionnelles (CLP) for the CSST.

... because not doing so has harmful consequences.

Once alerted by the Protecteur du citoyen, the two agencies—at the initiative of the SAAQ—agreed to undertake a joint analysis of the situation in order to reach a solution that meets existing legal requirements.

The two agencies must strengthen their mechanisms for collaboration.

The Protecteur du citoyen will closely monitor progress on this issue.

A restrictive interpretation of the law

Certain individuals complained to the Protecteur du citoyen that the SAAQ had refused to pay interest on expenses they had incurred for items like medication, and treatment subsequent to a traffic accident.

The SAAQ refuses to make certain interest payments.

The complainants' initial claims for compensation from the SAAQ had been rejected on the grounds that their medical conditions were not a result of their accidents. They had therefore refrained from claiming reimbursement of the expenses in question, but had appealed the substantive decision to the Tribunal administratif du Québec, which ruled in their favor.

The Automobile Insurance Act stipulates that in cases where a tribunal overturns an initial decision denying compensation to a claimant or increases the indemnity awarded, interest must be paid. Subsequent to rulings in favor of accident victims, the SAAQ has paid compensation with interest. It has also reimbursed accident-related expenses. In this case, however, it refused to pay interest on related expenses on the grounds that no previous decision had been issued ruling them ineligible for reimbursement. The SAAQ considered the tribunal's decision as a first ruling and consequently determined that no interest was payable on the sum reimbursed.

The justification runs counter to the spirit, if not the letter, of the law.

The Protecteur du citoyen pointed out that when the SAAQ rejects a claim for compensation, it implicitly refuses to pay all related costs. Compensation includes repayment of expenses. Therefore, when an administrative tribunal overturns a SAAQ decision rejecting a compensation claim, interest should also be paid on the related costs.

The SAAQ accepted the Protecteur du citoyen's argument and changed its policy. The decision reasserts a principle the Protecteur du citoyen set out in its 2002–2003 annual report after intervening in another case, i.e., "lawfully and logically, the right to interest payments should begin when the right to benefits began."[6]

The SAAQ changes its policy.

6. LE PROTECTEUR DU CITOYEN, *2002–2003 Annual Report: Going the extra mile*, Québec, November 2003, p. 138.

A delay with serious consequences

The SAAQ changes its ruling.

An individual was the victim of a car accident shortly after completing his studies in June 2001. He was initially compensated as a student. In 2003, the SAAQ reconsidered its initial decision and decided that, at the time of the accident, the man was "an unemployed person able to work," given that he had completed his studies.

For nearly two years, it neglects to recalculate indemnity payments.

In cases like this, the SAAQ has six months to determine the indemnity to be paid to the victim according to the person's training, work experience, and physical and intellectual skills. Based on these factors, the agency determines the type of job the victim might have held had it not been for the accident.

By March 2004, the SAAQ had still not recalculated the indemnity and the man complained to the Protecteur du citoyen.

The SAAQ pays $37,000 in arrears.

Action by the Protecteur du citoyen led to a rapid settlement. In April 2004, the complainant received $37,000 in arrears for income replacement indemnity (IRI) payments covering a period of nearly two years. Unable to work, the man continues to receive IRI benefits.

A partially erroneous decision

A citizen was previously compensated for permanent aftereffects.

A woman injured in a 1985 car accident that left her with serious permanent aftereffects received 100% of the maximum compensation available under the law at the time of the accident for non-monetary damages. She nonetheless was able to work and returns to the labor force.

She suffers a relapse.

In late 2001, the woman was forced to stop working due to renewed health problems caused by the aftereffects of the accident. The SAAQ compensated her anew.

Worsening of permanent aftereffects.

Called in at a later date regarding a different problem, the Protecteur du citoyen undertook a thorough review of the woman's file, only to find that the decision rendered by the SAAQ after the relapse contained errors.

Although the SAAQ dealt correctly with the victim with regard to her income replacement indemnity and the expenses engendered by her relapse, it erred in the section of the decision dealing with the additional aftereffects the woman suffered.

In 1990, Québec legislators passed the Act to amend the Automobile Insurance Act and other legislative provisions. The legislation stipulates that victims of accidents that occurred prior to January 1, 1990, are to be compensated under the new law if they suffer a relapse more than two years after the end of the period of incapacity for which they received an income replacement indemnity. In such cases, victims must be compensated for a relapse as if it constituted a new accident. This provision allows compensation amounts to be updated to take into account the significant indexation of amounts awarded under the Automobile Insurance Act over the years.

The SAAQ had correctly applied these provisions with regard to the IRI but not for the worsening of permanent aftereffects on the grounds that the victim had already received 100% of the allowable amount under the law in effect at the time of the accident. This interpretation was erroneous.

Subsequent to the Protecteur du citoyen's discovery, the woman received an additional $7,800 for the worsening of permanent aftereffects caused by the relapse.

An additional amount is awarded.

Going back to work first required getting back on the road

A woman was in two car accidents in less than six months. The second accident significantly aggravated the injuries suffered in the first. The woman developed a phobia regarding transportation by car and received psychological treatment paid for by the SAAQ.

A phobia regarding transportation by car.

After her injuries began to stabilize, the SAAQ requested an assessment to determine whether the woman's psychological condition was sufficient to allow her to return to work.

The psychiatrist mandated to conduct the assessment concluded that the woman's psychological health was sufficient to allow her to perform work-related tasks, although they would be a source of stress. However, he observed that her phobia of transportation by car still prevented her from traveling to work, which is a one and a half hour trip each way.

The SAAQ only paid heed to the first part of the assessment and deemed that the woman could return to work since she was able to perform job-related tasks.

Called on to intervene, the Protecteur du citoyen pointed out that the woman could not be considered fit to work if she were unable to commute due to the psychological trauma she had suffered. The SAAQ agreed and recognized the woman as unable to work. She was able to continue therapy to try to get over her phobia.

The woman was not in a position to return to work.

■ Highway Safety Code

Insufficient Information

Analysis of the complaints received this year about the enforcement of the Highway Safety Code has brought to light certain deficiencies in the quality of information given citizens with regard to recourse for contesting a medical decision, sanctions imposed, or the grounds for an unfavorable decision following the assessment of their relationship with alcohol.

Compensatory Skills

A little-known way to recover a driver's license.

When the SAAQ is notified that a driver has a medical condition essentially incompatible with the safe operation of an automobile (according to its regulations), it suspends their driver's license. The SAAQ then notifies them of their right to appeal to the Tribunal administratif du Québec, or their right to a review if they can provide new health information. These recourses allow drivers to contest the diagnosis that led to the suspension of their license. However, another mechanism—set out in sections 83.1 and 191.1 of the Highway Safety Code—allows drivers to have their licenses reissued if they can show they have developed compensatory skills that allow them to drive safely despite the initially unfavorable diagnosis.

The Protecteur du citoyen observed that the SAAQ does not always notify citizens of this mechanism, as was seen in the case of a woman whose license was suspended after a medical exam in March 2003 indicated that her field of vision did not meet regulatory standards. Unaware of the procedure to evaluate compensatory skills, the woman tried for over a year—armed with supporting reports by optometrists and occupational therapists—to have a road test to show that she could safely compensate for her deficiency. In spite of her repeated requests, the SAAQ denied her this test, reiterating that she did not meet the required standards. It was not until she contacted the Protecteur du citoyen and learned about this procedure that she was able to reformulate her application as per the procedure and take her road test. After passing the test, her license was finally reissued.

The SAAQ undertakes to provide better information.

Following interventions by the Protecteur du citoyen to rectify this problem, the SAAQ modified its policy to ensure that citizens requesting a license suspension review receive more complete information. Thus, for cases where a suspension is upheld after a review request but where analysis of the situation indicates the possibility that a driver may develop compensatory skills, the SAAQ will write these individuals to inform them of the possibility of requesting to have their compensatory skills recognized.

Information Given Upon Vehicle Registration

Sometimes, the information people receive when they go to the SAAQ service centers to take care of a variety of driver's license or registration issues can also be insufficient, which may put them in an illegal situation. The Protecteur du citoyen has received complaints from people who, after going to a service center to register their vehicle, were not notified that their license had been suspended due to unpaid fines. Not only were they not notified of this fact, which clearly would have prompted them to rectify their situation right away, but they registered their vehicles with no clear warning that their car was no longer authorized to be on the road. Since May 2004, under the new provisions of the Highway Safety Code, the SAAQ must prohibit the circulation of any motor vehicle registered to the name of drivers with unpaid fines and refuse to register any new vehicles under their name. The result of this failure to provide information? These people were stopped by police while driving, were issued another ticket, and had their cars seized!

One driver contacted the Protecteur du citoyen, which managed to get the car released because the SAAQ acknowledged that it should not have registered the vehicle.

The Protecteur du citoyen reminded the SAAQ of the importance of systematically notifying drivers of any outstanding sanctions against their license or vehicle when they come to a service center in order to prevent such situations.

Driver Assessment with Regard to Alcohol Consumption: Lack of Transparency

The Protecteur du citoyen mentioned this process in its report last year and pointed out certain excessive requirements in this regard by the SAAQ. This year, the Protecteur du citoyen wishes to focus on the lack of transparency in the SAAQ decision making after an unfavorable summary assessment.

It is important to remember that as of April 2002, first-time offenders convicted of alcohol-impaired driving have their license suspended for one year and must undergo a mandatory summary assessment of their driving behavior. Assessments are conducted at rehabilitation centers affiliated with the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes, with which the SAAQ has signed an exclusive agreement. After a one-hour assessment, assessors forward their findings to the SAAQ. If the recommendation is favorable, the driver's license will be reissued after the one-year suspension period. If it is unfavorable, drivers must undergo a six-month comprehensive assessment at their own expense and have an alcohol ignition interlock installed in their.car for an additional year.

The SAAQ implements a way to seek recourse...

Since this process was implemented, the Protecteur du citoyen has received numerous complaints from individuals wishing to contest an unfavorable recommendation, but who were denied an appeal by the SAAQ, because, according to the agency, no decisions are made at this step in the process. Disgruntled citizens were then referred to the Federation. The Federation, while assuring them that the assessment was compliant with regulatory standards, denied citizens access to their records, citing the provisions of the Access to Information Act and the Act respecting health services and social services. As such, individuals had no real recourse to contest an unfavorable assessment.

In the summer of 2004, the SAAQ reviewed its interpretation of the Highway Safety Code provisions dealing with the assessment process and, as of November, conceded that citizens could contest the findings of summary assessments before the Tribunal administratif du Québec or request that they be reviewed.

... that may prove to be ineffective.

This demonstrates a degree of openness a good number of citizens will certainly wish to take advantage of. However, one has to wonder about the fate of those who since 2002 have not had this option, because the SAAQ decided not to make this a retroactive change. The recourse itself seems to be somewhat theoretical, considering that the SAAQ says itself that it bases its decisions on assessment findings without consulting the files which, it says, belong to the rehabilitation centers. As a result, not only is the SAAQ unable to make rational decisions, which contravenes the Act respecting administrative justice, but citizens also cannot effectively contest them because they do not have access to their files. The Protecteur du citoyen cannot accept such a lack of transparency, and it intends to take the necessary steps with the SAAQ to ensure that citizens have access to appropriate recourse.

More Excessive Requirements

The Protecteur du citoyen noted last year that the SAAQ sometimes went beyond the scope of the law and its regulations by adding its own administrative requirements. Once again this year, it observed other examples of excessive requirements, specifically with regard to requests to have a license from another province exchanged for a Québec one.

Why require a birth certificate?

One person, who was born in Québec, lived in Manitoba from 2000 to 2004. When he returned to Québec, the SAAQ required him to provide proof of Canadian citizenship (passport or birth certificate) to establish his eligibility for a Québec license and to proceed with the exchange, even though he had had a Québec license before leaving for Manitoba. As the individual did not have the necessary documents and needed a license quickly, he contacted the Protecteur du citoyen. Following its intervention, the SAAQ agreed to issue a temporary license until he could get his birth certificate from the Registrar of civil status. The Protecteur du citoyen does not understand the justification for such a requirement for citizens who have already held a Québec license.

Another useless requirement.

Once eligibility is established, the SAAQ requires more proof to establish the validity of the license issued in the other province. As a result, applicants must provide proof that they resided in the issuing province for at least six months. Once again, the Protecteur du citoyen questions the need for such a requirement, which is not stipulated in the Highway Safety Code. Furthermore, the SAAQ has signed agreements with other provinces and states recognizing the validity of licenses issued by them.

This was the situation of a person with visitor status who arrived in Québec in 1998, and then lived in Ontario for a few months, where he exchanged his original license for an Ontario license. When he returned to Québec—after acquiring permanent resident status in May 2004—he wanted to exchange his Ontario license for a Québec one, as set out in the interprovincial agreement. The SAAQ then asked him for proof of residence in this province despite the fact that the agreement stipulates no such requirement. Following the intervention of the Protecteur du citoyen which has to provide a considerable effort, the SAAQ finally cancelled this requirement, and the individual was able to exchange his license with no further formalities.

Despite its success in rectifying a few individual cases, the Protecteur du citoyen continues its efforts to verify the legality of the SAAQ's license exchange requirements.

Improvement to Regulation Regarding Safety Standards for Road Vehicles

Protecteur du citoyen has resolved a few specific issues.

In 1998, the Protecteur du citoyen intervened with the SAAQ to help a family of nine people who own a minibus to be exempt of the biannual mechanical inspections required for this type of vehicle. The Protecteur du citoyen submitted that the minibus was used for domestic purposes only, since normal passenger vehicles are not big enough to transport all the members of this family. It was thus unfair to burden them with the inconvenience and expense of the mechanical inspection required for public carriers. Not only did the SAAQ agree to exempt the family in this case, but it also changed its policy to accommodate all families in this situation.

A regulatory change solves the problem for good.

In November 2004, the Ministère des Transports modified the Regulation regarding safety standards for road vehicles to cover this type of situation. Now, families with at least nine members who own a minibus will only be obliged to have one mechanical inspection performed before registration, and only if the vehicle is used.

In 2001, there were 370 families in Québec with at least nine members. All of them are eligible to benefit from the eased regulation.

Good ideas can go a long way!

3.3 SCRUTINY OF LEGISLATION: ANALYSIS OF PARLIAMENTARY BILLS AND DRAFT REGULATIONS

As part of our "scrutiny of legislation" efforts, on which the Protecteur du citoyen has focused over the last few years, all bills and draft regulations were sent to the delegate responsible for the relevant sector for information purposes and, if necessary, a more detailed analysis. If appropriate, this analysis may lead to an intervention by the Protector. This activity is part of the first objective of the Protecteur du citoyen's 2004-2008 Strategic Plan, "Ensure that citizen rights are upheld in this time of change," of which one of the goals is to make this task a priority.

In 2003-2004, the Protecteur du citoyen forwarded comments regarding five bills and two draft regulations. In 2004-2005, the process led to 13 interventions.

In several cases, the Protecteur du citoyen's recommendations were welcomed positively (as in the case of Bill 53 – Act to amend the Act respecting immigration to Québec). They even led to the announcement of amendments (for example in regards to Bill 61 – An Act respecting the Agence des partenariats public-privé du Québec). Moreover, Bill 57, the Individual and Family Assistance Act, which has not yet been adopted, was the object of a brief and a parliamentary committee intervention to reiterate issues of concern to the Protecteur du citoyen with respect to individual and family support programs.

Finally, Bill 83, an Act to amend the Act respecting health services and social services and other legislative provisions, received particular attention, because it proposed, among other things, that the Health and Social services ombudsman's responsibilities be conferred upon the Protecteur du citoyen.

A summary of the comments and recommendations regarding these four bills illustrate the nature of the Protecteur du citoyen's interventions related to the scrutiny of legislation.

During the 2004-2005 year:

Comments on seven bills

The Protector presented her observations before a parliamentary committee regarding the following bills:

1. An Act to amend the Act respecting immigration to Québec (Bill 53)
2. Individual and Family Assistance Act (Bill 57)
3. An Act respecting the Agence des partenariats public-privé du Québec (Bill 61)
4. An Act to amend the Act respecting health services and social services and other legislative provisions (Bill 83)

The Protecteur du citoyen forwarded comments to the minister responsible on the following bills:

1. An Act to amend the Civil Code as regards Marriage (Bill 59)
2. An Act to amend the Act respecting the Bibliothèque nationale du Québec, the Archives Act and other legislative provisions (Bill 69)
3. Private Security Act (Bill 88)

Six draft regulations were commented upon

The Protecteur du citoyen forwarded comments to the directors of the government agencies responsible for the following draft regulations:

1. Regulation amending the Regulation respecting the application of the Public Curator Act (2004, G.O. 2, 1383)
2. Regulation to amend the Regulation respecting financial assistance for education expenses (2004, G.O. 2, 2133A)
3. Regulation amending the Regulation respecting teaching licences (2004, G.O. 2, 2301)
4. Regulation amending the Regulation respecting teaching permits and teaching diplomas (2004, G.O. 2, 2302)
5. Regulation amending the Regulation respecting childcare services provided at school (2004, G.O. 2, 2304)
6. Regulation to amend the Regulation respecting income support (2004, G.O. 2, 4031A)

With regard to the three regulations derived from the Education Act (items 3, 4, and 5) that touch on the issue of judicial records, the ministère de l'Éducation informed the Protecteur du citoyen that following its comments, the minister was withdrawing his draft regulations and would introduce instead certain provisions within a bill which is expected to be tabled in the spring of 2005.

Bill 53:
An Act to amend the Act respecting immigration to Québec

The Protector presented to the Committee on Culture her comments on the amendments. This text summarizes the essential elements of her statement.

The bill introduces the "source area" criteria, according to which immigrant selection could be made not only by categories (workers, entrepreneurs, investors) but would also according to applicants' origins. The goal is to diversify the immigrant population as originating from different regions of the world.

While concurring with this objective, the Protector is concerned regarding the definition given to a source area as "a country, a group of countries with common linguistic, cultural and economic characteristics or a continent or part of a continent". According to the Protector, the concept of "linguistic, cultural and economic characteristics" could eventually be interpreted to favour or disregard certain groups. It would be preferable to remain with a criteria based on "a country, continent of part of a continent". The Protector's suggestion was accepted.

The bill also stipulated that the receipt of applications could be suspended for one year, a measure that may be renewed for an additional year. Even if this discretion is applied to a privilege and not to a right, the Protector is convinced that for the sake of transparency, equity and integrity in processing applications, the methods of implementing this discretion should be clarified. This suggestion was not adopted.

The bill stipulated that such a suspension could be applied retroactively whenever the government deemed it appropriate, and that it would also relate to applications received before the law was put into effect.

The Protector stated that on one hand retroactivity should remain an exceptional provision and that while the National Assembly is entitled to adopt legislation retroactively, it must avoid making it a rule of law to be acknowledged in the Act and applied in the future. As for retroactively suspending applications filed before the law was adopted, the Protector submitted that, out of respect for people's equality, such a measure should be avoided or at the very least, that its scope should be limited.

The retroactive suspension of applications for certificates has been set at three months.

Bill 57:
Individual and Family Assistance Act

In October of 2004, the Protector tabled a brief before the Committee on Social Affairs regarding Bill 57 – Individual and Family Assistance Act. She made recommendations on the following elements.

Article 49 of the bill provides for the abolition of administrative sanctions imposed upon recipients who refuse to participate in job readiness measures or take employment. However, it does not contain any provision limiting the reduction in benefits when the recipient must reimburse a debt.

On this issue, the Protector suggested that the minister examine the possibility of initiating collection measures once the recipient becomes independent or regains independence. She also recommended a review of the amounts deducted as compensation, which can currently reach 42% of the minimum benefits given.

Even though it is widely acknowledged that the minimum assistance payments of $533 barely cover recipients' needs, the issue of measuring poverty has not been resolved. The Protector recommended that the Observatory provided for by the Act to combat poverty and social exclusion be created and that a thorough study be conducted.

The government's action plan states that only individuals who have serious employment constraints can have their benefits escalated. In the case of individuals capable of working, partial indexing will be at half the established rate.

In that regard, the Protector noted that an increase in the cost of living affects everyone. She therefore recommended that indexing should be granted to all recipients, regardless of their status because the market makes no such distinction.

People aged 55 years and older currently benefit from an additional $113 per month, which is equivalent to the rate applied to cases of temporary limitations to employability. Article 44 of the bill amends the Act's provisions by allowing the government to adopt a regulation in order to determine the age at which a recipient is eligible for supplemental payments. If the government's intent is to increase the minimum eligible age to receive supplemental payments, the Protector believes that the change should be made gradually. She also hopes that any interventions made will respect the individual's choices and their willingness to continue working, reintegrate into the workforce or either take early retirement or retirement.

The Act currently provides that support payments are considered income and therefore must be accounted for when calculating benefit payments. In 1998, the Ministère granted a $100 exemption on income stemming from support payments for families caring for a child five years old or younger; the government intends to extend this exemption to all families with a dependent child.

The Protector recommended that the exemption granted to recipients of support payments be equal to that granted to workers, which is $200 per month for a single adult and $300 for a family.

Article 53 of the bill maintains the provisions of article 32 of the current Act, which never went into effect and provided for the seizure of partial payments in the case of a recipient's failure to pay rent. The Protector recommended abolishing this provision, which amplifies the exclusion factor that is already burdening impoverished citizens.

The Protector strongly urged the minister to maintain in the law the responsibilities conferred to the Ministère's information and complaints office, instead of conferring those responsibilities upon the minister himself. The current legislative base imparts independence to this office and maintains its credibility within the Ministère, which can only be beneficial to citizens who use its services.

At the moment that this report was written, the bill had not yet been passed.

Bill 61:
An Act respecting the Agence des partenariats public-privé du Québec

The Protector presented her comments regarding this bill during the proceedings of the Committee on Public Finance, which is responsible for its analysis.

In the wake of implementing the Modernization Plan 2004-2007 made public in May of 2004, the government gave concrete expression to its intention to further resort to public-private partnerships in order to complete infrastructure projects and provide services to citizens by presenting in June its policy framework on this issue , as well as the bill creating the Agence des partenariats public-privé du Québec.

The bill's goal is the creation of the Agence des partenariats public-privé du Québec, whose mission would be to advise the government on all matters relating to partnerships and offer expert services to government agencies regarding project evaluation, as well as contract negotiation, completion and management.

The bill decrees that government agencies can access the services of the Agence if they so wish. The ministères, on the other hand, will be obligated by law to use the Agence's services on all projects that are largely funded by said ministères for which a public-private partnership is planned and that are considered large projects as determined by the government's criteria.

Because the Agence is not a ministère and its employees do not legally belong to the public service, it will not be subject to the Protecteur du citoyen's power of intervention. The Protector would have hoped that, like with the creation of the Agence nationale d'encadrement des services financiers, the Protecteur du citoyen's jurisdiction would still be recognized. Such will not be the case. The Protector believes nevertheless that this shortcoming is in part mitigated by the Agence's role as essentially one of expert and consultant, and that control over project implementation will remain the purview of the ministères, which are, for their part, subject to the Protecteur du citoyen's jurisdiction.

This bill reflects most of the concerns from specialists who have analyzed the difficulties linked to public-private partnerships. The Protector concurs with the government's intent to obtain a tool to oversee carefully such projects' evaluation process.

7. SECRÉTARIAT DU CONSEIL DU TRÉSOR, *Modernizing the State. Promoting quality services to the population. Policy framework on public-private partnerships.* Shine among the best, Québec, June 2004.

The Protector was nevertheless concerned by the shortcomings of the bill in terms of transparency and ethics. Among other things, she recommended that the guiding principles described in the policy framework should also be included in the bill in order to guarantee citizens that they will be respected at all times. These principles are transparency, equity, quality services to citizens, accountability and protection of public interest. She also suggested that rules regarding ethics and conduct be tightened and that Agence personnel be explicitly subject to the Regulation respecting the ethics and professional conduct of public office holders[8].

The Protector also wondered about the extent of the powers being delegated by ministères to the private sector, which were attributed to the ministères by an act or regulation. She suggested limiting the extent of powers subjet to delegation by excluding certain functions. She also proposed that consultation mechanisms be implemented with stakeholders regarding the nomination of members of the Agence's board of directors.

The Protector also insisted on the importance of increasing monitoring mechanisms of the Agence and its subsidiaries and also on the necessity of setting out guidelines regarding their powers.

Sanctioned on December 17, 2004, the bill was amended to reflect several of the Protector's recommendations. The Agence, therefore, will not have the mandate to promote public-private partnerships as originally provided for in the bill. Instead, it will essentially be an advisory organization. Agence subsidiaries will be subject to monitoring by the Auditor General as well as to the provisions of the Act respecting access to documents held by public bodies and the Protection of personal information[9]. From now on, the values of transparency, equity and accountability are included in the law and the Agence's personnel will be explicitly subject to the Regulation respecting the ethics and professional conduct of public office holders.

Bill 83:
An Act to amend the Act respecting health services and social services and other legislative provisions

In the Protector's report presented to the National Assembly's Committee on Social Affairs, she commented on four major issues.

8. D 824-98 (1998) 130 GO, 2, 3474.

9. L.R.Q., ch. A-2.1.

▪ Broadening the Protecteur du citoyen's mandate

The Protector enthusiastically welcomed the decision to broaden the institution's mandate by adding the responsibilities of the Health and Social Services Ombudsman. The Protecteur du citoyen had already proposed this change in 1990 and has since repeated the recommendation on several occasions.

The Protector believes that the credibility of the health and social services network's complaint system will increase because this ultimate recourse will stem from a source independent of the executive branch.

In order to ensure the cohesion and unity of the new structure and avoid any confusion for the public, the Protector recommended that the title of Health and Social Services Ombudsman be abolished and that the legislative provisions regarding the latter be integrated as quickly as possible into the Public Protector Act.

▪ Complaint Review Mechanism

The Protector proposed amendments to the bill in order to improve access to the system for all citizens. She recommended that:

- anyone be allowed to file a complaint on behalf of a third party;
- verbal complaints be accepted at all stages of the process;
- the Protecteur du citoyen oversee all issues concerning the respect of procedures for complaints against physicians;
- the physician mandated to investigate these types of complaints not be the director of professional services of the relevant establishment.

The Protector believes that neutrality and impartiality of such senior manager may be questioned since this individual is the first responsible for the quality of medical treatments dispensed in said establishment.

▪ Certification of housing facilities for the elderly

The Protector is pleased of the implementation of a certification procedure, which consists of a certificate of compliance attributed to private residences housing the elderly who were referred to them by Health and Social Services network. However, she recommended that this measure not be limited to these individuals alone. It should also be applicable for people living with a cognitive or intellectual deficiency, those living with chronic or psychological illnesses, or those suffering from drug addiction.

In addition, the regional complaints commissioner and the Protecteur du citoyen should be able to intervene in all private residences, even when the individuals residing there were not referred by establishments, when they are warned of a situation that can jeopardize the health or the well-being of residents.

▪ Right to consent

The Protector expressed her concern regarding provisions of the bill allowing the disclosure in certain situations of personal information without the citizen's consent. She therefore recommended that the right to consent be maintained for the express purpose of transferring health information.

The bill also provides for keeping certain health information on file, which requires the consent of the individual concerned. Information thus available on file may be divulged to health care workers. The Protector recommended that the consent form regarding record keeping of personal health information also clearly indicate that said consent includes the disclosure of said information. The minister of Health and Social Services must also take the necessary measures to ascertain that citizens are well informed of their right to access and correct the information kept on file.

PUBLIC AND MEDIA RELATIONS

The Protecteur du citoyen participates regularly in a variety of public events in order to improve the general public's awareness regarding the role of the institution and the recourses that it provides to any person experiencing a problem with public administration. The Protecteur du citoyen also grants media interviews to explain its stance on various issues or discuss a specific problem.

MEDIA RELATIONS 4.1

In 2004-2005, the Protecteur du citoyen gave over forty interviews to representatives of print and electronic media for public affairs programs, news reports or interviews.

PUBLIC RELATIONS 4.2

In carrying out her duties, the Protector and her staff participate regularly in events in connection with various conventions, conferences, seminars and fairs. During the 2004-2005 fiscal year, the Protecteur du citoyen addressed several groups, associations, public servants and citizens in order to raise awareness of its role and mandate. Below is the list of meetings held during the 2004-2005 fiscal year:

April 2004

- Ligue des droits et libertés du Saguenay–Lac-Saint-Jean. 1st Forum "Une Charte pour un véritable droit de cité" – Jonquière.
- Corporation de développement communautaire Bois-Francs and meeting with staff members of the National Assembly Member for Arthabaska "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Victoriaville.
- Organisation d'aide aux sans-emploi de Montréal. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Montréal.
- Association des responsables des bureaux de plaintes du gouvernement du Québec. "Intervention en équité" [Intervention in Equity] – Québec.
- Maison d'hébergement pour femmes et enfants victimes de violence conjugale. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Granby.
- Participation during the "Semaine du Barreau" [Law Society Week] in Montréal.
- Conférence des juristes de l'État "L'Équité : au cœur de la compétence du Protecteur du citoyen" [Equity: in the heart of the Protecteur du citoyen's jurisdiction] – Québec.

May 2004

- École L'Escale. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Thetford Mines.
- Second annual conference "Impacts '04" in conjunction with the Mouvement québécois de la qualité. "Évaluez mieux la performance de votre organisation en implantant un bureau de plaintes" [Improve your organization's performance evaluation by establishing a complaints office] – Québec.
- Annual Assembly of the Commission des lésions professionnelles. "Le Tribunal vs les délais : les conséquences sur le citoyen" [The Tribunal vs. Deadlines: consequences for citizens] – Montréal.
- Continuous training of the Barreau du Québec. "L'intervention du Protecteur du citoyen : au-delà de la légalité, l'équité" [The Protecteur du citoyen's intervention: beyond legality, there is equity] – Québec.
- Participation in the Salon des générations in Québec.
- Participation in the "Open house day" at the Trois-Rivières courthouse.

June 2004

- Centre d'accueil pour références sociales et économiques. Monthly information meeting for recent immigrants. "Rôle et mandat du Protecteur du citoyen" [Role and mandate of the Protecteur du citoyen – Montréal.
- National Council of Jewish Women of Canada. Conference on financial abuse towards seniors – Montréal.
- Meeting with the "Groupe des 40" [Group of 40] from the ministère du Revenu. "L'intervention en équité" [Intervention in Equity] – Trois-Rivières.

September 2004

- Agence de développement de réseaux locaux de services de santé et de services sociaux. [Local health and social services network development agency.] "Rôle et mandat du Protecteur du citoyen, et efficacité d'un bureau de plaintes" [Role and Mandate of the Protecteur du citoyen and the effectiveness of a complaints office] – Saint-Charles-Borromée.
- 2004 Colloquium of representatives from the Réseau des Carrefours jeunesse-emploi du Québec. Rôle et mandat du Protecteur du citoyen [Role and Mandate of the Protecteur du citoyen] – Saint-Hyacinthe.

October 2004

- Côte-des-Neiges Community Centre. Information session for recent immigrants. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Montréal.

- Centre d'expertise des Grands organismes (CARRA, SAAQ, CSST, RRQ, CNT, RAMQ). Explanations on the contents of the 2003-2004 annual report and information regarding our "Intervention en équité" [Intervention in Equity] document – Université Laval (Québec).
- Participation in the Education, Training and Career Fair. Place Bonaventure – Montréal.
- Participation in the Education and Job Fair at the Centre de foires Expo-cité - Québec.

November 2004

- École nationale d'administration publique. Principes et enjeux de l'administration publique. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Québec.
- Centre communautaires des femmes sud-asiatiques. Information session for recent immigrants. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Montréal.

December 2004

- Carrefour des personnes ainées de Lotbinière. Implementing the project "Les ainés de Lotbinière engagés dans l'action" [Seniors of Lotbinière in action] – Lotbinière.
- CLSC des Seigneuries. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Varennes.

January 2005

- Meeting with the staff of the Direction de la révision of the Société de l'assurance automobile du Québec. on "Intervention en équité" [Intervention in Equity] – Drummondville.

February 2005

- Information session offered to students registered in the "Auxiliaire familial et social à domicile" course "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Lévis.
- Office des personnes handicapées du Québec. Information session offered to office's integration counsellors. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Drummondville.
- Cercle des fermières de Sherbrooke. "Rôle et mandat du Protecteur du citoyen" [Role and Mandate of the Protecteur du citoyen] – Rock Forest.

4.3 PUBLICATIONS

Below is the list of documents officially published by the Protecteur du citoyen during the 2004-2005 fiscal year.

- 2004-2008 Strategic Plan
- The Protecteur du citoyen's Chronicle (summer 2004 and spring 2005)
- 2003-2004 Annual Report

Furthermore, for some months now, visually-impaired citizens can contact the Audiothèque and listen to a recording of the content of the flier "Connaissez-vous le Protecteur du citoyen?" This year, due to an increasing demand from English-speaking citizens living with this disability, the Protecteur du citoyen authorize the Audiothèque to record its flier "Do you know your Québec Ombudsman?" The Audiothèque intends to make available to the visually impaired the maximum amount of information.

THE PROTECTEUR DU CITOYEN'S NATIONAL AND INTERNATIONAL ACTIVITIES

VIII[TH] CONFERENCE OF THE INTERNATIONAL OMBUDSMAN INSTITUTE

5.1

The Protector hosted the VIII[th] Conference of the International Ombudsman Institute (I.O.I.) held at the Québec Convention Centre from September 7 to 10, 2004.

Pauline Champoux-Lesage

Four hundred and fifty (450) participants from 77 countries registered for this international event, which received the support of the Prime Minister of Canada and the Québec Premier beforehand.

The program theme for the conference was "Balancing the Obligations of Citizenship with the Recognition of Individual Rights and Responsibilities - The Role of the Ombudsman or the Mediator". Rather timely, the theme echoed concerns observed in our societies which search for balance between the growth of democratic institutions, respect for human rights and as well as necessity to achieve collective security. The conference provided an opportunity for ombudsmen and mediators to reflect on their role and contribution in the search for this balance.

Her Excellency Right Honourable Adrienne Clarkson

Several key figures agreed to address participants. The Governor General of Canada, Her Excellency the Right Honourable Adrienne Clarkson, delivered the opening address and Mr. Sam Hamad, Minister responsible for the National Capital Region, addressed participants on behalf of the Québec government.

The Honourable Mr. Justice Louis LeBel of the Supreme Court of Canada, Mr. Riccardo Petrella, an economist and Mr. Nikiforos Diamandouros, European Mediator were speakers at the plenary sessions.

Honorable Louis LeBel

Riccardo Petrella

Nikiforos Diamandouros

Thirty-four distinguished guests added their contribution, ensuring high-level debates in eleven workshops. Ms. Monique Gagnon-Tremblay, Deputy Premier, Minister for International Relations and Minister responsible for the Francophonie, spoke during a dinner hosted by the Protector, while Mr. Michel Bissonnet, President of the National Assembly of Québec, addressed participants during the closing banquet.

Monique Gagnon-Tremblay

Michel Bissonnet

Plenary sessions and workshops benefited from simultaneous interpretation services in French, English and Spanish to facilitate the debates. Furthermore, at the initiative of our German colleagues, simultaneous interpretation services in German were also available during plenary sessions and some workshops.

This VIII[th] International Conference was a great success in terms of its content, as well as its organization. Several participants expressed their satisfaction to the Protector for the conference's success, and we are confident that attendees left Québec with fond memories.

The International Conference of the I.O.I. only takes place every four years. Québec was honoured to be included among its host cities. Previous conferences were held in Edmonton (Canada) in 1978, Jerusalem (Israel) in 1980, Stockholm (Sweden) in 1984, Canberra (Australia) in 1988, Vienna (Austria) in 1992, Buenos Aires (Argentina) in 1996 and Durban (Republic of South Africa) in 2000.

5.2 VISITS BY FOREIGN DELEGATIONS

During a study visit organized by the National Assembly of Québec, Ms. Lucie Lavoie and Mr. Jean-Claude Paquet met a parliamentary delegation from Mali who were interested in knowing more about the institution of the Protecteur du citoyen. The meeting was held on November 25, 2004.

On May 5, 2004, the Protector met with 12 members of the National Assembly of Niger regarding the Protecteur du citoyen's mandate and responsibilities. This event was held during a study visit organized by the Parliamentary Centre of Canada.

On February 2, 2005, the Protector welcomed Ms. Roylene Mills, who oversees the training program for Australia's Queensland Parliament. Her visit was organized by the National Assembly.

5.3 EXTERNAL MEETINGS

- Meeting of the Canadian Council of Parliamentary Ombudsmen (CCPO)

  From May 17 to 18, 2004, the Protector took part in the annual conference of Canadian parliamentary ombudsmen in Toronto pursuant to the invitation of Ontario Ombudsman, Mr. Clare Lewis.

- 10[th] Summit of La Francophonie

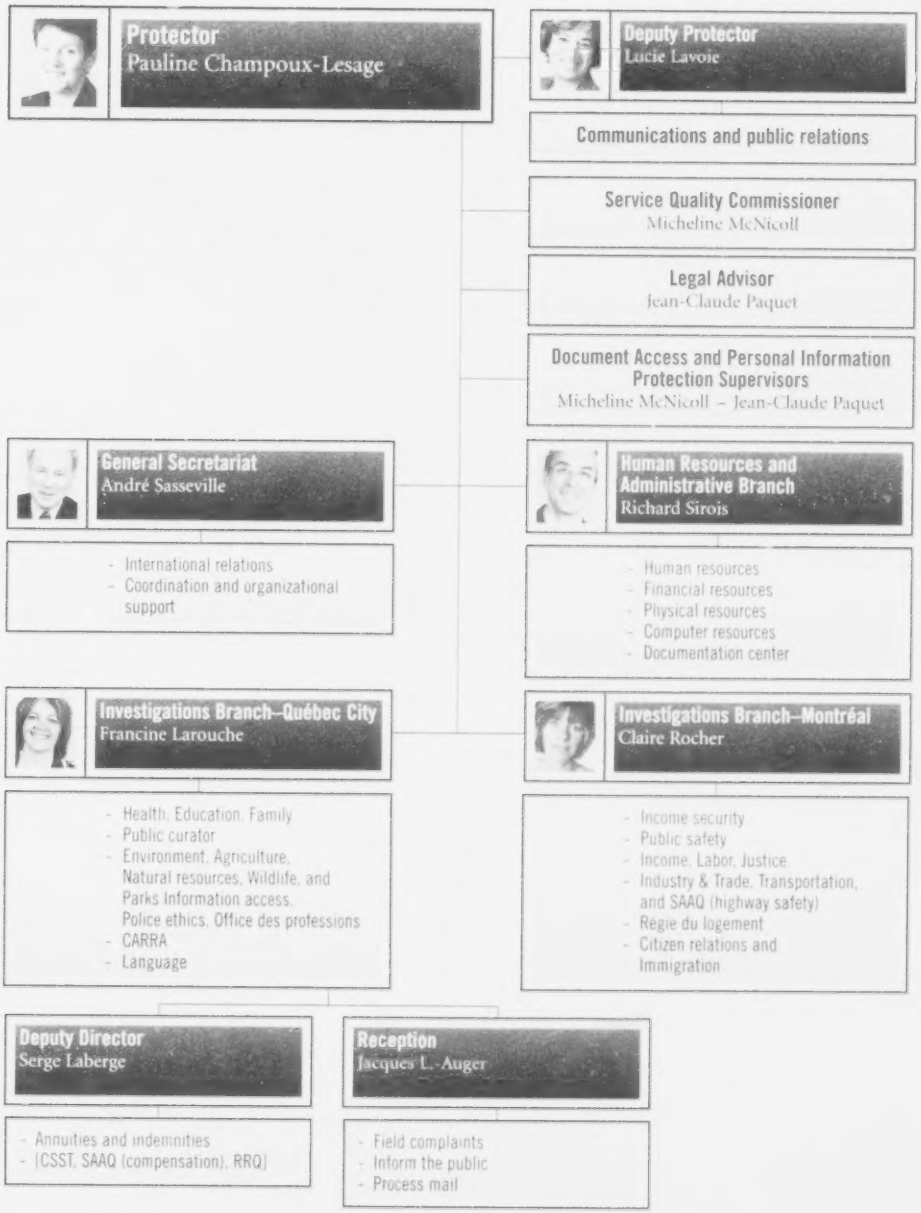
  The Protector took part in La Francophonie's networks conference, which took place in Ouagadougou (Burkina Faso) on November 22 and 23, 2004 within the 10th Summit of La Francophonie. The main topic for the conference focused on the contribution of networks in the implementation of observation and assessment mechanisms of democratic practices within La Francophonie.

MANAGEMENT REPORT

The management report included herein was developed in accordance with the Public Administration Act, with which the Protecteur du citoyen has chosen to comply.

Administrative Data

ORGANIZATION CHART 6.1

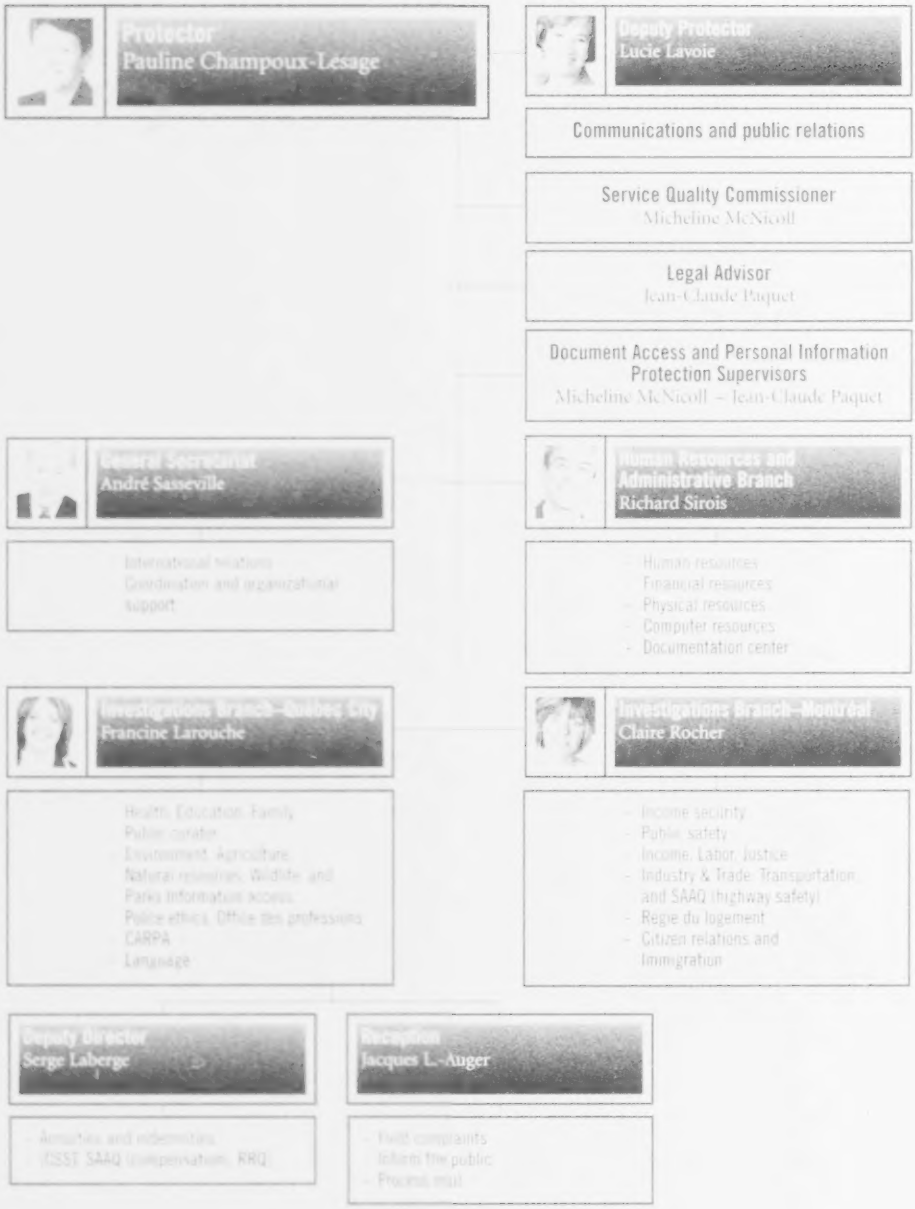


MANAGEMENT REPORT

The management report included herein was developed in accordance with the Public Administration Act, with which the Protecteur du citoyen has chosen to comply.

Administrative Data

ORGANIZATION CHART 6.1



6.2 RESOURCES MANAGEMENT

6.2.1 Human resources

On March 31, 2005, the Protecteur du citoyen had 94 authorized positions distributed as follows:

	Special Appointments	Management	Professional Staff	Technicians	Support staff	TOTAL
Office of the Protector	2	1	4		1	**8**
Service Quality Commissioner		1				**1**
Legal Advisor			1	1	1	**3**
General Secretariat and Communications		1	2		2	**5**
Human Resources and Administrative Services		1	5	4	3	**13**
Reception		1			5	**6**
Investigations – Québec City		2	16	9	4	**31**
Investigations – Montréal		1	12	12	2	**27**
TOTAL	**2**	**8**	**40**	**26**	**18**	**94**

A number of casual employees joined permanent staff members last year to enable the Protecteur du citoyen to successfully fulfill its mission, particularly to replace people on sick leave, maternity leave, leave without pay, or secondment, a professional development measure we promote.

After the staff received union certification in October 2003, negotiation of an initial collective agreement began in June 2004. However, negotiation was interrupted when union certification was revoked by Commission des relations de travail in December 2004 in response to the desire expressed by the majority of staff members in a secret vote.

Retaining and developing staff expertise remained a priority in 2004–2005. The International Ombudsman Institute convention held in Québec City in September 2004 was a good opportunity to stress staff training. In addition to individual training, the annual plan also emphasized group training sessions on harassment, ethics, and mental health.

Financial resources 6.2.2

The budget awarded the Protecteur du citoyen by the National Assembly for 2004–2005 was used as follows:

The Protecteur du citoyen's budget

Expenditure statement for fiscal years ended March 31, 2004 and 2005

	2003-2004 ($)	2004-2005 ($) *
Remuneration		
Regular and casual employees	5,218,677	5,251,495
Employer contributions	532,102	536,096
Pensions for former protectors and deputies	250,277	250,277
TOTAL	**6,001,056**	**6,037,868**
Operations		
Transportation and communications	484,401	606,486
Professional and administrative services	287,497	205,284
Maintenance and repairs	51,531	61,775
Rent and leasing fees	666,777	667,799
Goods and supplies	71,500	83,888
Material and equipment	56,622	45,201
Amortization	135,203	127,485
Other expenditures	1,400	1,988
TOTAL	**1,754,931**	**1,799,906**
Capitalization		
Computer technology development	101,380	886,433
Material and equipment	76,581	49,538
TOTAL	**177,961**	**935,971**
GRAND TOTAL	**7,933,948**	**8,773,745**

*Expenditures estimated as at March 31, 2005

This table shows few significant variations in expenditures compared to last year:

- The International Ombudsman Institute convention hosted by the Protecteur du citoyen in Québec City in September 2004 generated extraordinary expenditures under "Transportation and communications."
- A new computer system to directly support the mission of the Protecteur du citoyen was developed in 2004–2005, explaining the significant increase in computer technology development expenditures.
- In 2004–2005, expenditures on professional services returned to normal after increasing sharply in 2003–2004 due to the many preparatory studies required to revamp the computer system.

The table below illustrates another breakdown of financial resources based on the administrative structure and work organization of the Protecteur du citoyen.

2004–2005 Expenditure Breakdown

	People	Expenditures		Total	%
		Remuneration	Operations		
		$	$		
Office of the Protecteur du citoyen and mission support	13	939,113	200,175	1,139,288	15
Direct services					
Reception	6	323,195	92,389	415,584	5
Investigations – Québec City	32	2,027,766	492,739	2,520,505	33
Investigations – Montréal	27	1,494,000	415,749	1,909,749	25
Communications	3	250,084	46,195	296,279	4
National and international activities			225,000	225,000	3
Administration	13	753,433	200,175	953,608	13
(Amortization)			127,485	127,485	2
TOTAL	**94**	**5,787,591**	**1,799,907**	**7,587,498**	**100**

Note: This table does not include capitalization and pensions for former protectors and deputies. Operating expenditures are distributed proportionally with regard to human resources.

6.2.3 Computer resources

The investigation management system is the main tool for following up on citizen complaints and requests submitted to the Protecteur du citoyen. It directly supports the mission of our institution.

In 2004–2005, considerable work was realized towards replacing this system. With the support of an expert supplier, the Protecteur du citoyen set up servers, databases, and a development environment and proceeded with technical implementation and development of the new system. The Protecteur du citoyen expects to roll out this system by early fiscal year 2005–2006.

STRATEGIC PLANNING

The 2004-2008 Strategic Planning is based on the following three objectives:

1. Ensure that citizen rights are upheld in this time of change.
2. Raise awareness of the institution of the Protecteur du citoyen and promote the values it advocates.
3. Be a model, state-of-the-art organization focused on serving citizens.

The 2004-2005 review outlines and analyzes the results achieved in the first year of the Strategic Plan.

OBJECTIVE 1

Ensure that citizen rights are upheld in this time of change.

▶ AREA OF ACTION 1:

Ensure that the established rules of democracy are followed transparently and that the values of social justice and solidarity are upheld.

GOALS:

- Develop an evaluation grid to help us perform our monitoring task more effectively.
- Make this task our priority.

RESULTS:

- Two committees were created, the first on government modernization, and the second regarding the online government. A reference document for personnel was produced to provide a global view of various government projects and their potential impact on citizens.

  The evaluation grid enclosed with this document is to be used as a support tool for personnel. It summarizes the objectives and issues related to different aspects of the government modernization plan. Said document also provides some guidelines and a list of analysis criteria, some related to services and others to values advocated by the government and the Protecteur du citoyen.

  Exchange meetings regarding the content of this document were organized for the benefit of the staff in the Investigations Branch.

▶ AREA OF ACTION 2:

Promote the quality of relations between the Administration and the general public, in whatever form this might take

GOALS:

- Provide reference tools to help government departments and agencies.
- Act in a timely manner to ensure and improve the effectiveness of citizen recourses.

RESULTS:

- The Protecteur du citoyen's paper entitled *L'intervention en équité* is available to all departments and agencies, as well as on the Protecteur du citoyen's Web site. The objectif of this document is to develop the concepts of legality, unreasonable act and equal treatment, and defines equity, one of the values advocated by the Protecteur du citoyen. One government agency, the Société de l'assurance automobile du Québec, has already used the principles of this document as a general guide when developing their decision review process.
- The Protecteur du citoyen intervened on three occasions, concerning the Bibliothèque nationale du Québec, public-private partnerships and private security services, either to defend the Protecteur du citoyen's jurisdiction or to expose a lack of recourse.

OBJECTIVE 2

Raise awareness of the Protecteur du citoyen and promote the values it advocates.

▶ AREA OF ACTION 1:

Raise awareness of the Protecteur du citoyen among the general public and such multiplying agents as community organizations and associations.

GOALS:

- Make the Protecteur du citoyen better known among various target groups, including young people, immigrants and residents of the Greater Montréal area.

RESULTS:

- Over the 2004-2005 fiscal year, awareness-raising activities were directed at young people. The Protecteur du citoyen was active at two youth fairs and participated in a convention of the Réseau des Carrefour jeunesse-emploi du Québec. One of the Protecteur du citoyen's Chronicles was produced specifically targeting youth and a flier was provided to the directors of vocational training programs within various school commissions to raise awareness on the services provided by the Protecteur du citoyen, in particular with regards to loans and bursaries. Finally, a message detailing the Protecteur du citoyen's services was disseminated throughout Québec universities through their primary information media.
- In the 2004-2005 fiscal year, more than one dozen meetings were held with citizen support and assistance groups.

▸ AREA OF ACTION 2:

Promote the values of justice, equity, transparency, respect and integrity in Administration/citizen relations.

GOALS:

- Promote the office of the Protecteur du citoyen with government departments and agencies.
- Use various forums to promote our values.
- Contribute to national and international activities that foster respect for citizen rights.

RESULTS:

- Over the course of the last year, the Protecteur du citoyen promoted its document entitled *L'intervention en équité.*

  A presentation was given during the annual meeting of the Association des juristes de l'État, for the benefit of managers of complaint offices, the staff of the Ministère du Revenu, personnel from various government agencies, and managers in charge of review procedures at the Société de l'assurance automobile du Québec.

  It is interesting to note the receptivity expressed by personnel from different departments and agencies contacted and the interest that the Protecteur du citoyen's document garnered throughout these meetings.
- The Protector was furthermore host to an international gathering of ombudsmen and mediators from 77 countries. Not only was it a unique sharing opportunity between ombudsmen and their staff, but also an occasion to reflect on vital contemporary issues such as security and the respect of rights.
- The Protecteur du citoyen collaborates every year with other Canadian ombudsmen. The Protecteur du citoyen's legal advisor was very active in a project comparing legislation relating to Canadian ombudsmen. Two representatives from the office of the Protecteur du citoyen conducted training at the request of the Forum of Canadian Ombudsman (FCO) on the role of the ombudsman investigator.
- Directors and delegates of the Protector held meetings with representatives from government departments and agencies to either exchange ideas on orientations or discuss ways to improve certain administrative procedures or policies. Topics discussed included student financial assistance ; the Ministère de la Culture et des Communications ; the Curateur public ; the Société de l'assurance automobile du Québec ; the Ministère de l'Emploi, de la Solidarité sociale et de la Famille ; the Ministère du Revenu (Centre de perception fiscale, Bureau des plaintes, Direction de la perception des pensions alimentaires) ; and the Direction générale des services correctionnels of the Ministère de la Sécurité publique.

OBJECTIVE 3

Be a model, state-of-the-art organization focused on serving citizens.

▸ AREA OF ACTION 1:

Develop expertise to face new challenges and bolster staff dedication.

GOALS:

- Review skill profiles to improve staff recruitment and training.
- Make full use of employee skills and promote skills development.
- Offer a stimulating work environment.

RESULTS:

- The skill profile of Investigation Branch professionals was reviewed.
- A five-year workforce planning model was developed to predict staff replacement needs and the appropriate allocation of competent personnel to achieve the strategic objectives of our institution.
- The Protecteur du citoyen implemented a policy on psychological harassment. The entire staff was made aware of this issue and management received training in the matter.
- To answer a need expressed by staff, a policy was adopted to settle disagreements regarding work conditions.

▸ AREA OF ACTION 2:

Improve our work methods for studies, analyses and surveys

GOALS:

- Promote greater care in our work processes.
- Improve consistency of institutional activities.
- Adopt a structured, ethical approach.
- Equip ourselves with modern tools to ensure the quality of our activities and increased accountability.

RESULTS:

- Objectives were established to implement an ongoing training forum and consultation within the Investigations Branch.
- The following achievements toward the implementation of an ethics committee were reached: defining the committee's mandate and the parameters of its operations, the choice of committee members and preliminary training offered to all personnel regarding implementation of ethical procedures.
- A new computerized management system of investigation cases was developed and is ready to be implemented at the beginning of the 2005-2006 fiscal year. Directly contributing to the achievement of our mandate, our strategic objectives and our commitments to quality services, this new system required an evaluation of our work procedures, the precise identification of the needs to be met, the development of a user-friendly tool adapted to our needs, and training of our entire staff with regards to the new approach.
- The revision work of the reference guide on case file procedures that was planned for 2006 was conducted ahead of time in order to integrate the guide into the computerized investigation case management system.

▸ AREA OF ACTION 3:

Be an organization focused on meeting the needs of all citizens.

GOALS:

- Develop reception strategies adapted to the specific needs of certain vulnerable or needy clients.
- Pay close attention to response time and the way cases are resolved with citizens.
- Offer sufficient support to personnel in stressful situations with clients.

RESULTS:

- A training program focusing on communicating with individuals with mental health problems was given to personnel who are in direct contact with clients.

  The goals of the program were to raise awareness on this issue, train staff to recognize symptoms of mental health problems, and provide techniques to facilitate communication.

- As part of the *Programme d'aide aux employés* (Assistance program for employees), two training programs were offered to interested employees: *Plaisir au travail* (Finding Pleasure in Work) and *La reconnaissance* (Gratitude).

- Benefiting from the review of the computer system, additional tools were developed to adequately follow every file processing step. Concurrently, a self-analysis tool was provided to professionals and technicians involved in investigations in order to determine the reason for any delays and, if possible, improve performance.

- In June 2004, the Protecteur du citoyen conducted a survey *(Sondage sur la satisfaction de la clientèle)* [Client Satisfaction Survey] with the *Outil québécois de mesure* (OQM) established by the Ministère des Relations avec les citoyens et de l'Immigration to determine client satisfaction.

  This allowed us to better understand citizens' expectations of the Protecteur du citoyen and also to identify areas for improvement.

  The survey data clearly revealed that "relational aspects" (one of the three measures of quality examined in the survey) was the aspect that had the most potential to positively impact client satisfaction.

  Personnel was made aware of the importance of taking a sufficient amount of time to determine the client's expectations in order to precisely relate the extent to which the Protecteur du citoyen can address their complaint, and also to clearly and patiently explain the basis of our conclusions.

6.4 SERVICE STATEMENT TO CITIZENS

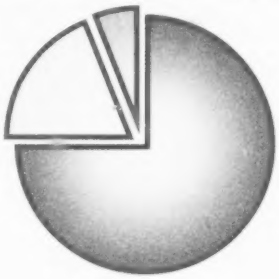
As outlined in the 2004-2007 Service Statement, the Protecteur du citoyen's commitments deal with accessibility, care and quality of communication, all of which reaffirm our intent that the citizenry remain the focus of our daily concerns.

Telephone Response Rate

In less than 3 minutes, an operator will answer you.

In 2004-2005[10], we responded in less than 3 minutes to 75% of 61 811 total telephone calls received compared to 74% in 2003-2004. The rate of people hanging up has dropped to 6% from last year's 7%.

Last year's efforts lead to a slight improvement in our performance.



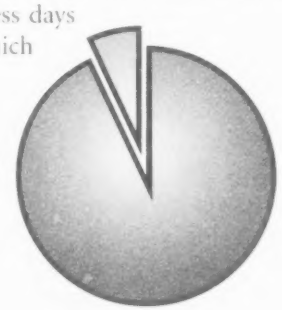
75%	< 3 minutes
19%	> 3 minutes
6%	hang-up

The Protecteur du citoyen intends to maintain these efforts to guarantee his performance.

First Contact with Citizens

Within 2 business days, we acknowledge receipt of your request verbally or in writing.

All correspondence is recorded in order to verify the time it takes to answer any letter that came in by fax, Internet or mail. In 2004-2005, citizens who sent us written requests were initially contacted within 2 business days in 93% of cases compare to 87% in 2003-2004, which is an improvement.



93%	≤ 2 business days
7%	> 2 business days

The Protecteur du citoyen intends to maintain this level of performance.

10. The statistics in this section cover an 11-month period from April 1, 2004, to February 28, 2005.

Service Requests to be Processed Promptly

We will refer you to the appropriate service within 2 business days

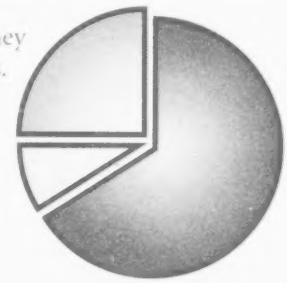
The Protecteur has been committed to increasing efforts to redirect at least 96% of the requests that do not fall within its jurisdiction to the appropriate services within 2 business days. This goal was exceeded to 93%, compared to last year's 92%.

We are committed to processing your request and notifying you of any additional delay within 10 business days.

In 2004-2005, 66% of requests under its jurisdiction were processed and completed within a maximum of ten business days, compared to 68% in 2003-2004, while 9% were completed within 11 to 20 business days. The nature of certain cases, their complexity and the difficulty in ensuring that corrective actions are taken in some situations have led to a completion time of more than 20 days for 25% of all files.

These statistics are based on files closed in 2004-2005. They include 10% of the files created during the previous years.

66%	1 to 10 days
9%	11 to 20 days
25%	21 days and more



The Protecteur du citoyen intends to maintain this course and further improve its performance.

New Management Tool

On April 1, 2005, a new computer system will be implemented. Data concerning the two-day response rate for all requests, both written and by telephone, will be readily available on the new system.

Quality of Communications

In June of 2004, the Protecteur du citoyen conducted a client survey to measure quality in various aspects of its services, including with regards to communications. Out of all the aspects surveyed, the quality of communications received the highest level of approval, reflecting the constant concern of all personnel with respect to this commitment. Relations with citizens shall remain an area of continuous improvement for the Protecteur du citoyen.

6.5 THE SERVICE QUALITY COMMISSIONER'S REPORT

If citizens are dissatisfied with the type or quality of services provided by the Protecteur du citoyen, or with the behavior of its staff, they may file a complaint with the Protecteur du citoyen's service quality commissioner.

The Protecteur du citoyen undertakes to ensure that each complaint is processed as openly as possible, in a completely confidential and impartial manner, within a maximum of ten business days. In the event that a complaint cannot be processed within this time frame, the Protecteur du citoyen notifies the citizen of the approximate processing time and, if necessary, the reasons for any additional delay.

In 2004–2005, the commissioner received 157 complaints from 140 people. Some complaints included several reasons for dissatisfaction. The commissioner reviewed 180 reasons.

The rate of substantiated complaints was 6.9%, a significant improvement over last year's rate of 12.5%. All of these complaints were rectified. Furthermore, 14 reasons for dissatisfaction led to improvement measures, compared to 17 last year.

Again this year, the most frequent substantiated complaints dealt with delays in returning calls or providing conclusions, as well as communication problems.

6.5.1 Customer satisfaction survey

The commissioner met with all Investigations Branch staff to present the results of the survey administered in July 2004 to 200 people who had asked the Protecteur du citoyen for help in the previous four months.

She emphasized the special environment of the Protecteur du citoyen services:

- People whose complaints were found to be unsubstantiated generally tended to be less satisfied with the quality of the Protecteur du citoyen services, making it important to take the time to carefully identify expectations and explain conclusions.
- Our daily challenge is to fulfill our mission impartially while remaining empathetic.

ACCESS TO INFORMATION AND THE PROTECTION OF PERSONAL INFORMATION

6.6

Enforcement of the Act respecting the protection of personal information

6.6.1

Pursuant to the *Government Action Plan* for the protection of personal information, each government department or agency must evaluate its measures for protecting personal information and include the results in its annual report.

Awareness and training activities in 2004–2005

6.6.2

All new staff members attended a three-hour training session on enforcement of the Act respecting access to documents held by public bodies and the protection of personal information.

A guide about access was posted on the Protecteur du citoyen's intranet. Entitled *Guide d'appropriation de la Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels (A Guide to the Act respecting access to documents held by public bodies and the protection of personal information)*, this information tool for staff members is aimed at raising awareness, providing information, and suggesting a number of good practices to adopt in writing and filing decisions, which may at any time be subject to a request for access. This guide was also developed to help readers better understand the interaction between the two acts governing requests for access from the Protecteur du citoyen, i.e., the Act respecting access to documents held by public bodies and the protection of personal information and the Public Protector Act.

A half-day information and training session on the guide was given for all staff members in October 2004.

Priorities for 2005–2006

6.6.3

The Protector has identified the following priorities for the next fiscal year:

- Continue developing a general plan for the protection of personal information (2005–2008) with respect to implementation of a new computer system at the Investigations Branch
- Provide awareness and professional development activities on the protection of personal information

6.6.4 Statistics on document access requests

During the 2004–2005 fiscal year, 38 access requests were submitted to the Protecteur du citoyen pursuant to the Act respecting access to documents held by public bodies and the protection of personal information.

These included

1. 25 requests for access to nominative information

2. 11 requests for access to administrative documents

3. 1 request from another agency for permission to provide access to a Protecteur du citoyen document

4. 1 request which, following discussion with the citizen, did not constitute a request pursuant to the Act respecting access to documents held by public bodies and the protection of personal information

To process the 25 requests for access to nominative information, 254 Investigations Branch files and 8 complaints to service quality commissioner were analyzed.

Statistics for the past seven years

YEAR	NUMBER OF REQUESTS
2004-2005	38
2003-2004	34
2002-2003	46
2001-2002	30
2000-2001	30
1999-2000	30
1998-1999	28

STAFF MEMBERS

The Protector would like to thank all staff members who, in one way or another, helped fulfill the Protecteur du citoyen's mission over the past year. These include:

AHIER Marie
ALAIN Aline
ALARIE Pierre
ANTILA Kim
ARCHAMBAULT Marie-France
AUGER Jacques L.
BAILLARGEON Rita
BARAKAT Anne-Marie
BEAUPRÉ Claire
BÉDARD Jean-Pierre
BÉLANGER Claude
BERGERON Ann
BERBARI Aline
BERTHELOT Marjolaine
BLACKBURN France
BOLDUC Yves M.
BOUCHARD Alain
BOUCHARD Dominique
BOULAIS Jean-Frédéric
BOULANGER Annie
BOULIANNE Josée
BOURGET François
BOUTIN Andrée
BRAULT Maryline
BUSSIÈRES Jo-Anne
CAILLOUX Mariette
CARON Danielle
CHASSÉ Lyne
CLÉMENT Sylvie
COTÉ Valérie
CUSSON DESJARDINS Johanne
DAGUERRE André
D'AMOURS Jacinthe
DAOUST Geneviève
DE PASSILLÉ Philippe
DUBUC HICKEY Diane
DUFOUR Francine
DUGUAY Suzanne
FALARDEAU Louise
FLEURY Francine
FORTIER François
FOURNIER Berthe
GAGNON Lucie
GAGNON Suzanne
GOFFREDO Josie
GOSSELIN Dorys
GOSSELIN GRANT Jessy
GUAY Robert
HUDON SZIGETI Frances
JOSEPH Maryse
LABERGE Serge
LABONTÉ Michel
LADOUCEUR Marie-Claude
LALIBERTÉ Guy
LALIBERTÉ Martine
LANGEVIN Vicky
LAQUERRE Nathalie
LAROUCHE Francine
LAROUCHE Francyne
LAVOIE Lucie
LEBLANC Kim
LÉGARÉ Louise
LEROUX Chantal
LESSARD Michèle
LEVAC Lucie
LIRETTE Marlène
LYNCH Micheline
MARCOTTE Isabelle
MATHIEU Marie-Ève
MAYER Lise
McKAY GAGNÉ Louise
McNICOLL Micheline
MORIN Pierre
MULAOMEROVIC Albina
NADEAU Julie
NADEAU Lorraine
NORMAND Margaret
NUNEZ Egidio
OSORIO Alejandra
OSTIGUY Manon
PAGÉ Guy
PAQUET Jean-Claude
PAQUETTE Louise
PÉLOQUIN Marie-José
PERRON David
PICARD Suzanne
PILON Diane
PLANTE Patrick
POIRIER Huguette
POULIN Lucie
PRÉVOST France
RACETTE Anne-Marie
RAMSAY LEMELIN Géraldine
RIOUX Sophie
ROCHER Claire
ROUSSEAU Sylvie
ROUX Hélène
SASSEVILLE André
SÉVIGNY Monique
SIMAO Isabel
SIROIS Richard
SIYOMVO Freddy
ST-PIERRE Philippe
SWEENEY Linda
TALBOT Suzanne
TANGUAY Lina
THÉROUX Sylvie
TONDREAU Audray
TOUCHETTE Stéphane
TREMBLAY Karine
TREMBLAY Lissia C.
TREMBLAY Mona
TURCOTTE Sylvie
VINCENT Céline
WENTSER Georges

Employees on secondment who were absent all year:

DESCHÊNES Lyne
ROUSSEAU Fernande

Employee on leave without pay who was absent all year:

TEIXEIRA Armenia

6.8 STATISTICS

The following pages provide data on the main activities of the Protecteur du citoyen's Investigations Branch Offices.

The data for fiscal year 2004-2005 include citizen requests and cases opened at the initiative of the Protecteur du citoyen. Data excludes so called "systemic" investigations, as well as analyses of bills or regulations.

To better understand the data provided, the coding categories are briefly described below.

Brief definition of categories

Request outside jurisdiction: requests sent to the Protecteur du citoyen relating to an agency or a topic outside its jurisdiction.

Non-intervention or interruption: includes requests for information regarding a department or agency under the Protecteur du citoyen's jurisdiction, requests for intervention where the Protecteur du citoyen interrupted its efforts at the citizen's request and those where it refused to intervene or had to discontinue its efforts because the legislation covering its office outlines various reasons preventing it from intervening even if the request relates to an act or omission of an agency under its jurisdiction.

Referred request for intervention: requests for intervention regarding a department or agency under the Protecteur du citoyen's jurisdiction, where the Protecteur du citoyen has asked the citizen to first refer the matter to said agency or its complaints office.

Completed intervention: interventions regarding a department or agency under the Protecteur du citoyen's jurisdiction where it concluded on the presence or absence of prejudice to the citizen following an act or omission attributable to said government department or agency.

Statistical data

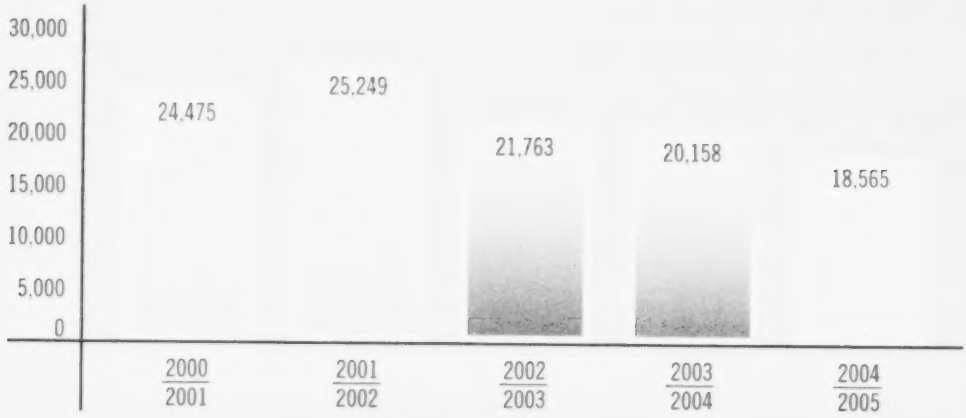
The year 2004-2005 began with an inventory of 1,163 files in process as of April 1, 2004, including reopened files. During the year, the Protecteur du citoyen received 18,171 requests and reopened 394 files. Among the 10,097 requests deemed to be under its jurisdiction, 341 were reopened files.

During the year, the Protecteur du citoyen processed 18,732 requests, of which 428 were files closed anew. It ascertained that 8,482 requests were related to agencies outside its jurisdiction while the remaining 10,250 were considered to be under his jurisdiction.

The year ended with an inventory of 996 files in process and re-opened files.

Evolution of Requests*
since 2000-2001

. GRAPH 1



* Requests received and files re-opened during the year.

Origin of requests received and files re-opened*
in 2004-2005

. TABLE 1

REGION	Population**		2004-2005	
	n	%	n	%
(01) Bas-Saint-Laurent	202,122	2.7	276	2.7
(02) Saguenay — Lac-Saint-Jean	277,045	3.7	235	2.3
(03) Capitale-Nationale	663,162	8.8	1,500	14.9
(04) Mauricie	259,459	3.4	478	4.7
(05) Estrie	297,958	4.0	376	3.7
(06) Montréal	1,877,192	24.9	3,139	31.1
(07) Outaouais	338,538	4.5	403	4.0
(08) Abitibi-Témiscamingue	145,343	1.9	145	1.4
(09) Côte-Nord	96,497	1.3	128	1.3
(10) Nord-du-Québec	39,234	0.5	15	0.2
(11) Gaspésie — Îles-de-la-Madeleine	96,943	1.3	147	1.5
(12) Chaudière-Appalaches	393,469	5.2	371	3.6
(13) Laval	364,806	4.8	287	2.8
(14) Lanaudière	413,670	5.5	374	3.7
(15) Laurentides	499,949	6.6	748	7.4
(16) Montérégie	1,352,349	17.9	1,141	11.3
(17) Centre-du-Québec	225,024	3.0	208	2.1
Out-of-Province	...	...	78	0.8
Unknown	...	...	48	0.5
TOTAL	**7,542,760**		**10,097**	

* Requests initially evaluated under competence. Requests received and files re-opened during the year.

** Source : Institut de la statistique du Québec. Profils régionaux. Estimation de la population totale par région administrative du Québec en 2004.

. TABLE 2 Departments and agencies most often targeted by requests received and files re-opened*

*in 2004-2005***

	n
Ministère de la Sécurité publique	3,423
Ministère de l'Emploi, de la Solidarité sociale et de la Famille	1,613
Société de l'assurance automobile du Québec	923
Revenu Québec	889
Commission de la santé et de la sécurité du travail	835
Ministère de l'Éducation	447
Régie de l'assurance maladie du Québec	281
Curateur public	250
Régie des rentes du Québec	241
Régie du logement	158
Ministère des Relations avec les citoyens et de l'Immigration	122
Commission des lésions professionnelles	100
Ministère de la Justice	84
Ministère de l'Environnement	58
Ministère des Ressources naturelles, de la Faune et des Parcs	58
Commission des normes du travail	53

* Requests initially evaluated under competence. Requests received and files re-opened during the year.

** Departments and agencies for which more than 50 total requests or file reviews were received in 2004-2005.

Ineligible requests by sectors

. TABLE 3

*in 2004-2005**

	n	%
Government organizations not under the jurisdiction of the Protecteur du citoyen	510	6.0
School system	106	1.3
Health and social services network	683	8.0
Municipalities	458	5.4
Child care system	6	0.1
Federal departments and agencies and those of other provinces	738	8.7
Private sector	5,937	70.0
Others	44	0.5
TOTAL	**8,482**	

* Ineligible requests and final closure of ineligible files during the year.

Information, Referrals, Withdrawals, Rejected and Suspended interventions

. TABLE 4

*in 2004-2005**

	n	%
Requests for information	640	13.6
Referred requests for intervention	1,362	29.0
Requests for intervention withdrawn by citizens	244	5.2
Rejected requests and suspended interventions	2,458	52.2
TOTAL	**4,704**	

* Requests involving the Protecteur du citoyen's juridiction. Closing and re-closing of files during this exercice.

. TABLE 5

Requests processed and re-closure of files broken down by departments and agencies

in 2004-2005

DEPARTMENTS AND AGENCIES	Unsubstantiated complaints	Substantiated complaints	Other* requests	Total
Agence de l'efficacité énergétique	4	-	-	4
Agence nationale d'encadrement du secteur financier	5	4	12	21
Assemblée nationale	-	-	10	10
Commissaire à la déontologie policière	20	2	17	39
Commission administrative des régimes de retraite et d'assurances	26	10	11	47
Commission d'accès à l'information	3	11	20	34
Commission de la fonction publique	7	6	9	22
Commission de la santé et de la sécurité du travail	257	101	473	831
Commission de protection du territoire agricole du Québec	3	-	19	22
Commission des lésions professionnelles	10	4	87	101
Commission des normes du travail	15	4	23	42
Commission des relations de travail	1	1	3	5
Commission des transports du Québec	2	-	3	5
Commission municipale du Québec	-	1	-	1
Commission québécoise des libérations conditionnelles	10	5	18	33
Conseil de la magistrature	1	-	2	3
Conseil du trésor (Secrétariat du)	-	3	12	15
Coroner	-	1	2	3
Curateur public	155	36	51	242
La Financière agricole du Québec	3	-	5	8
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	18	5	8	31
Ministère de l'Éducation	229	123	162	514
Ministère de l'Emploi, de la Solidarité sociale et de la Famille	744	80	820	1,644
Ministère de l'Environnement	27	11	30	68
Ministère de la Culture et des Communications	4	3	1	8
Ministère de la Justice	25	9	57	91
Ministère de la Santé et des Services sociaux	5	6	16	27
Ministère de la Sécurité publique	1,176	648	1,578	3,402
Ministère des Affaires municipales, du Sport et du Loisir	26	-	7	33
Ministère des Finances	5	5	5	15
Ministère des Relations avec les citoyens et de l'Immigration	37	58	65	160
Ministère des Relations internationales	-	-	3	3
Ministère des Ressources naturelles, de la Faune et des Parcs	24	4	35	63
Ministère des Transports	12	1	29	42
Ministère du Conseil exécutif	-	-	2	2
Ministère du Développement économique et régional et de la Recherche	5	-	-	5
Ministère du Travail	1	1	5	7
Office de la protection du consommateur	3	-	5	8
Office des personnes handicapées du Québec	-	1	1	2
Office des professions du Québec	4	-	3	7

Requests processed and re-closure of files broken down by departments and agencies
in 2004-2005

DEPARTMENTS AND AGENCIES	Unsubstantiated complaints	Substantiated complaints	Other* requests	Total
Office québecois de la langue française	4	12	3	19
Protecteur des usagers en matière de santé et de services sociaux	5	-	4	9
Régie de l'assurance maladie du Québec	168	43	78	289
Régie des alcools, des courses et des jeux	-	-	2	2
Régie des marchés agricoles et alimentaires du Québec	4	1	4	9
Régie des rentes du Québec	75	13	105	193
Régie du bâtiment du Québec	15	-	7	22
Régie du cinéma	1	-	-	1
Régie du logement	49	20	87	156
Registraire des entreprises	4	4	3	11
Revenu Québec	401	156	369	926
Société de l'assurance automobile du Québec	373	163	381	917
Société d'habitation du Québec	7	-	11	18
Tribunal administratif du Québec	6	1	33	40
Vérificateur général	-	-	1	1
TOTAL	**3,980**	**1,566**	**4,704**	**10,250**

* Requests for information, referred requests for intervention, intervention requests withdrawn by the citizen, rejected and suspended interventions.

TABLE 5

Requests processed and re-closure of files broken down by departments and agencies

in 2004-2005

DEPARTMENTS AND AGENCIES	Unsubstantiated complaints	Substantiated complaints	Other* requests	Total
Agence de l'efficacité énergétique	4	-	-	4
Agence nationale d'encadrement du secteur financier	5	4	12	21
Assemblée nationale	-	-	10	10
Commissaire à la déontologie policière	20	2	17	39
Commission administrative des régimes de retraite et d'assurances	26	10	11	47
Commission d'accès à l'information	3	11	20	34
Commission de la fonction publique	7	6	9	22
Commission de la santé et de la sécurité du travail	257	101	473	831
Commission de protection du territoire agricole du Québec	3	-	19	22
Commission des lésions professionnelles	10	4	87	101
Commission des normes du travail	15	4	23	42
Commission des relations de travail	1	1	3	5
Commission des transports du Québec	2	-	3	5
Commission municipale du Québec	-	1	-	1
Commission québécoise des libérations conditionnelles	10	5	18	33
Conseil de la magistrature	1	-	2	3
Conseil du trésor (Secrétariat du)	-	3	12	15
Coroner	-	1	2	3
Curateur public	155	36	51	242
La Financière agricole du Québec	3	-	5	8
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	18	5	8	31
Ministère de l'Éducation	229	123	162	514
Ministère de l'Emploi, de la Solidarité sociale et de la Famille	744	80	820	1,644
Ministère de l'Environnement	27	11	30	68
Ministère de la Culture et des Communications	4	3	1	8
Ministère de la Justice	25	9	57	91
Ministère de la Santé et des Services sociaux	5	6	16	27
Ministère de la Sécurité publique	1,176	648	1,578	3,402
Ministère des Affaires municipales, du Sport et du Loisir	26	-	7	33
Ministère des Finances	5	5	5	15
Ministère des Relations avec les citoyens et de l'Immigration	37	58	65	160
Ministère des Relations internationales	-	-	3	3
Ministère des Ressources naturelles, de la Faune et des Parcs	24	4	35	63
Ministère des Transports	12	1	29	42
Ministère du Conseil exécutif	-	-	2	2
Ministère du Développement économique et régional et de la Recherche	5	-	-	5
Ministère du Travail	1	1	5	7
Office de la protection du consommateur	3	-	5	8
Office des personnes handicapées du Québec	-	1	1	2
Office des professions du Québec	4	-	3	7

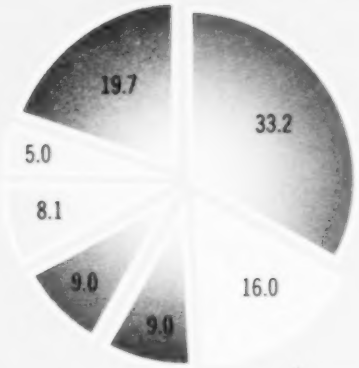
Requests processed and re-closure of files broken down by departments and agencies
in 2004-2005

TABLE 5 (cont'd)

DEPARTMENTS AND AGENCIES	Unsubstantiated complaints	Substantiated complaints	Other* requests	Total
Office québecois de la langue française	4	12	3	19
Protecteur des usagers en matière de santé et de services sociaux	5	-	4	9
Régie de l'assurance maladie du Québec	168	43	78	289
Régie des alcools, des courses et des jeux	-	-	2	2
Régie des marchés agricoles et alimentaires du Québec	4	1	4	9
Régie des rentes du Québec	75	13	105	193
Régie du bâtiment du Québec	15	-	7	22
Régie du cinéma	1	-	-	1
Régie du logement	49	20	87	156
Registraire des entreprises	4	4	3	11
Revenu Québec	401	156	369	926
Société de l'assurance automobile du Québec	373	163	381	917
Société d'habitation du Québec	7	-	11	18
Tribunal administratif du Québec	6	1	33	40
Vérificateur général	-	-	1	1
TOTAL	**3,980**	**1,566**	**4,704**	**10,250**

* Requests for information, referred requests for intervention, intervention requests withdrawn by the citizen, rejected and suspended interventions.

. GRAPH 2 Requests processed broken down by principal departments and agencies
*in 2004-2005**



Ministère de la Sécurité publique	3,402	(33.2%)
Ministère de l'Emploi, de la Solidarité sociale et de la Famille	1,644	(16.0%)
Revenu Québec	926	(9.0%)
Société de l'assurance automobile du Québec	917	(9.0%)
Commission de la santé et de la sécurité du travail	831	(8.1%)
Ministère de l'Éducation	514	(5.0%)
Others	2,016	(19.7%)
TOTAL	**10,250**	

* Requests involving the Protecteur du citoyen's juridiction.
Closing and re-closing of files during this exercice.

. TABLE 6 Substantiated complaints
*in 2004-2005**

DEPARTMENTS AND AGENCIES	Completed interventions	Substantiated complaints	Rate of substantiated complaints
	n	n	%
Ministère des Relations avec les citoyens et de l'Immigration	95	58	61.1
Ministère de la Sécurité publique	1,824	648	35.5
Ministère de l'Éducation	352	123	34.9
Société de l'assurance automobile du Québec	536	163	30.4
Régie du logement	69	20	29.0
Ministère de l'Environnement	38	11	29.0
Commission de la santé et de la sécurité du travail	358	101	28.2
Revenu Québec	557	156	28.0
Commission administrative des régimes de retraite et d'assurances	36	10	27.8
Ministère de la Justice	34	9	26.5
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	23	5	21.7
Régie de l'assurance maladie du Québec	211	43	20.4
Curateur public	191	36	18.9
Régie des rentes du Québec	88	13	14.8
Ministère des Ressources naturelles, de la Faune et des Parcs	28	4	14.3
Ministère de l'Emploi, de la Solidarité sociale et de la Famille	824	80	9.7
Commissaire à la déontologie policière	22	2	9.1
Ministère des Affaires municipales, du Sport et du Loisir	26	-	0.0

* Departments and agencies with more than 20 total interventions and final file closures in 2004-2005.

Causes of Injury

in 2004-2005[*]

. TABLE 7 6

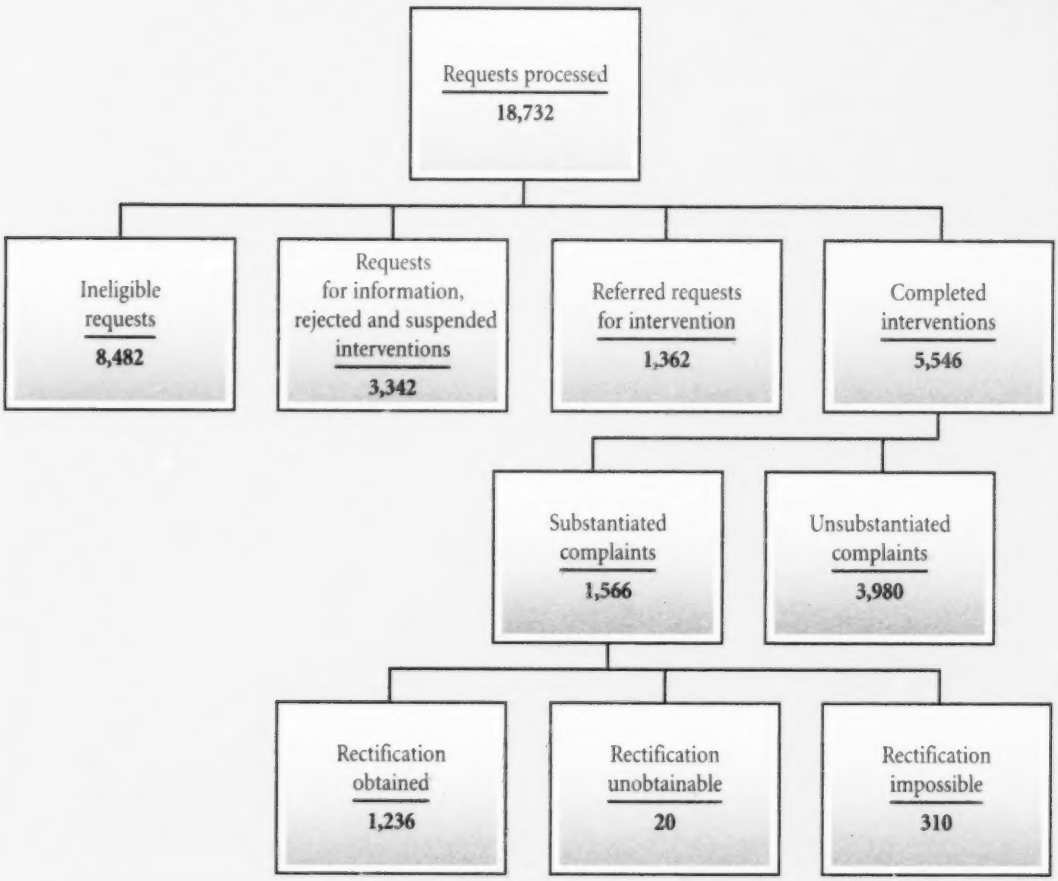
	n	%
Illegal act (laws and regulations)	264	16.9
Action not in compliance (guidelines, rules, service statement)	677	43.2
Unreasonable action	555	35.4
Factual error	70	4.5
TOTAL	**1,566**	

* Requests involving the Protecteur du citoyen's juridiction. Closing and re-closing of files during this exercice.

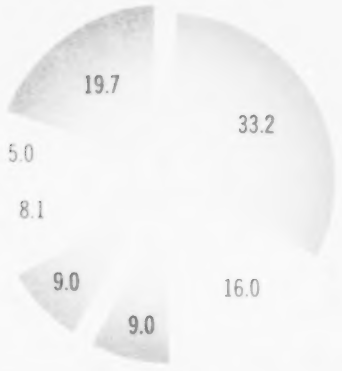
Requests processed and final closure of files: Results

in 2004-2005

. GRAPH 3



. GRAPH 2 Requests processed broken down by principal departments and agencies
*in 2004-2005**



Ministère de la Sécurité publique	3,402	(33.2%)
Ministère de l'Emploi, de la Solidarité sociale et de la Famille	1,644	(16.0%)
Revenu Québec	926	(9.0%)
Société de l'assurance automobile du Québec	917	(9.0%)
Commission de la santé et de la sécurité du travail	831	(8.1%)
Ministère de l'Éducation	514	(5.0%)
Others	2,016	(19.7%)
TOTAL	**10,250**	

* Requests involving the Protecteur du citoyen's juridiction. Closing and re-closing of files during this exercice.

. TABLE 6 Substantiated complaints
*in 2004-2005**

DEPARTMENTS AND AGENCIES	Completed interventions	Substantiated complaints	Rate of substantiated complaints
	n	n	%
Ministère des Relations avec les citoyens et de l'Immigration	95	58	61.1
Ministère de la Sécurité publique	1,824	648	35.5
Ministère de l'Éducation	352	123	34.9
Société de l'assurance automobile du Québec	536	163	30.4
Régie du logement	69	20	29.0
Ministère de l'Environnement	38	11	29.0
Commission de la santé et de la sécurité du travail	358	101	28.2
Revenu Québec	557	156	28.0
Commission administrative des régimes de retraite et d'assurances	36	10	27.8
Ministère de la Justice	34	9	26.5
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	23	5	21.7
Régie de l'assurance maladie du Québec	211	43	20.4
Curateur public	191	36	18.9
Régie des rentes du Québec	88	13	14.8
Ministère des Ressources naturelles, de la Faune et des Parcs	28	4	14.3
Ministère de l'Emploi, de la Solidarité sociale et de la Famille	824	80	9.7
Commissaire à la déontologie policière	22	2	9.1
Ministère des Affaires municipales, du Sport et du Loisir	26	-	0.0

* Departments and agencies with more than 20 total interventions and final file closures in 2004-2005.

Causes of Injury

in 2004-2005

TABLE 7

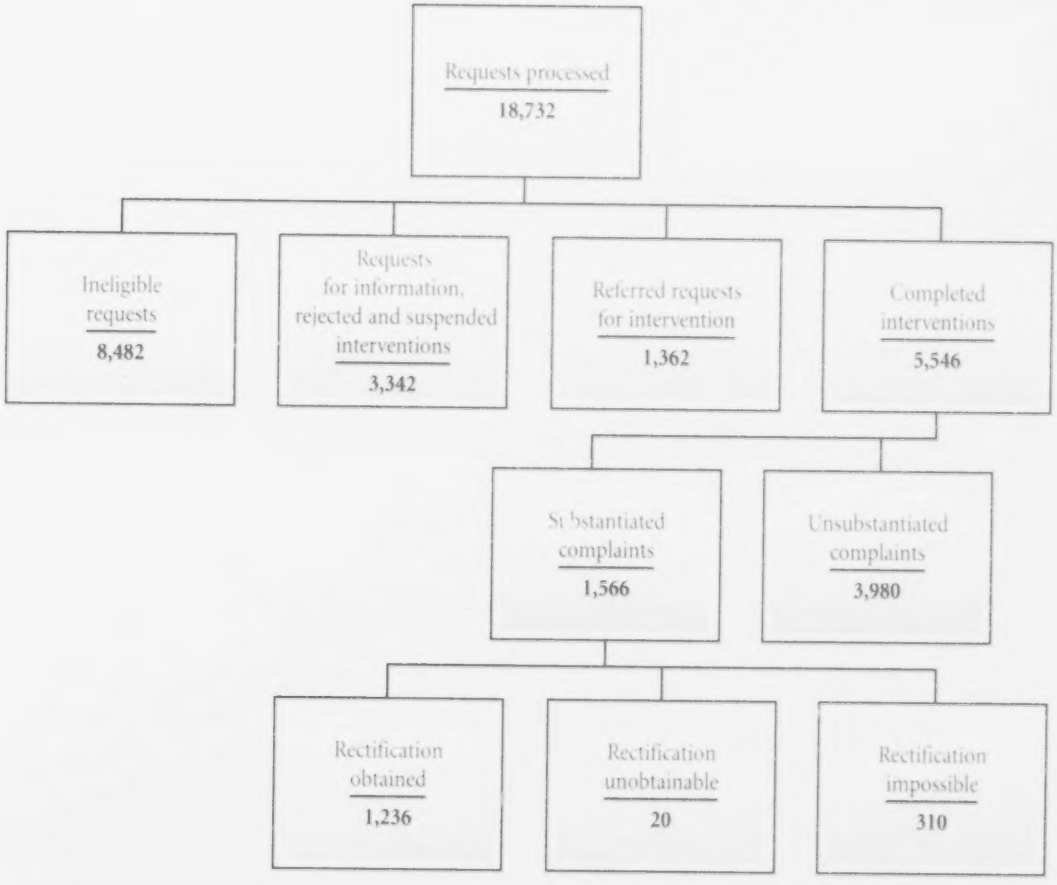
	#	%
Illegal act (laws and regulations)	264	16.9
Action not in compliance (guidelines, rules, service statement)	677	43.2
Unreasonable action	555	35.4
Factual error	70	4.5
TOTAL	1,566	

* Requests involving the Protecteur du citoyen's jurisdiction. Closing and re-closing of files during this exercice.

Requests processed and final closure of files: Results

in 2004-2005

GRAPH 3

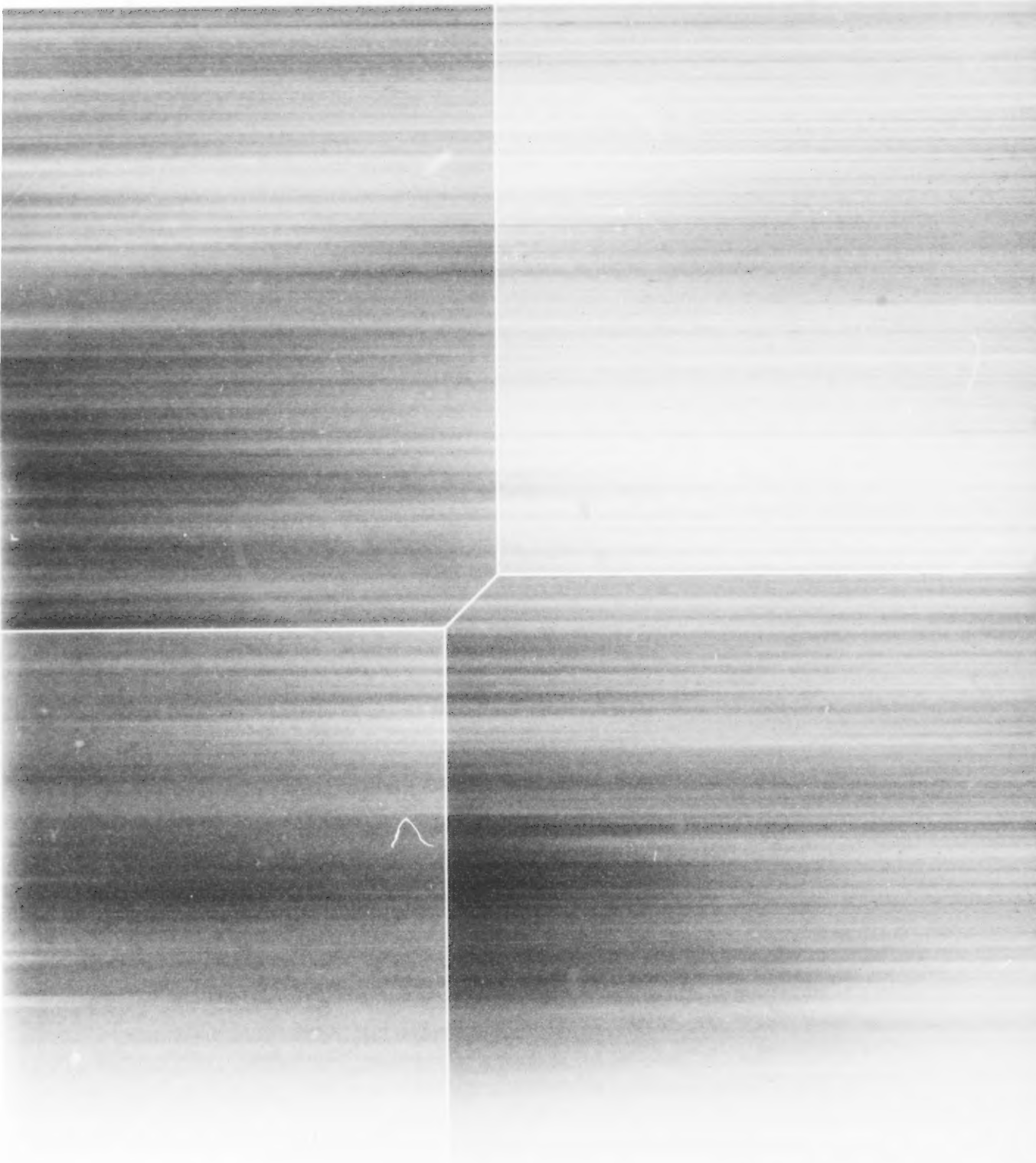


As Protector, I attest to the accuracy of the management data herein.

The Protector,

Pauline Champoux-Lesage

10% • The interior pages of this document are printed on recycled paper containing 10% post consumption fibre.



Quebec Office

525 René-Lévesque Blvd East
Suite 1.25
Québec (Québec) G1R 5Y4
Telephone: (418) 643-2688
Toll free: 1 800 463-5070
Fax: (418) 643-8759
protecteur@protecteurducitoyen.qc.ca

Montreal Office

1 Notre-Dame Street East
Suite 11.40
Québec (Québec) H2Y 1B6
Telephone: (514) 873-2032
Toll free: 1 800 361-5804
Fax: (514) 873-4640
protecteur@protecteurducitoyen.qc.ca